

TITLE 59
PUBLIC OFFICERS IN GENERAL

CHAPTER 13
PUBLIC EMPLOYEE RETIREMENT SYSTEM

59-1301. PUBLIC EMPLOYEE RETIREMENT SYSTEM CREATED -- PURPOSE -- DUTIES OF FIDUCIARIES OF RETIREMENT FUND. (1) A retirement and disability benefit system is created and placed under the management of a retirement board for the purpose of providing a retirement system and other benefits for public employees in the state of Idaho under this chapter. The retirement system shall be known as the "Public Employee Retirement System of Idaho."

(2) The purpose of such system is to provide an orderly means whereby public employees in the state of Idaho who become superannuated or otherwise incapacitated as the result of age or disability, may be retired from active service without prejudice and without inflicting a hardship upon the employees retired, and to enable such employees to accumulate pension credits to provide for old-age, disability, death and termination of employment, thus effecting economy and efficiency in the administration of the state, county and local government. The legislature, therefore, declares that, in its considered judgment, the public good, and the general welfare of the citizens of this state required the enactment of this measure, under the police powers of the state.

With respect to the retirement fund created in this chapter, the fiduciaries of the fund shall discharge their duties with respect to the fund solely in the interest of the members and their beneficiaries

(a) for the exclusive purpose of:

(i) providing benefits to members and their beneficiaries; and

(ii) defraying reasonable expenses of administering the system;

(b) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(c) by diversifying the investments of the fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(d) in accordance with the provisions of the Idaho Code governing the system.

[59-1301, added 1963, ch. 349, Art. 1, sec. 1, p. 988; am. 1990, ch. 231, sec. 1, p. 613; am. 1991, ch. 16, sec. 1, p. 36; am. 2000, ch. 13, sec. 1, p. 27.]

59-1302. DEFINITIONS. (1) As used in this chapter, each of the terms defined in this section shall have the meaning given in this section unless a different meaning is clearly required by the context.

(2) "Active member" means any employee who is not establishing the right to receive benefits through his or her employer's participation in any other retirement system established for Idaho public employees, if such participation is mandated by applicable Idaho statutes other than this chapter. In no case will an employee be entitled to any benefit under this chapter for public service if such employee is establishing retirement benefit entitlements by other Idaho statutes or federal statutes other than military service or social security for that same service.

(3) "Accumulated contributions" means the sum of amounts contributed by a member of the system, together with regular interest credit thereon.

(4) "Actuarial equivalent" means a benefit equal in value to another benefit, when computed upon the basis of the actuarial tables in use by the system.

(5) "Actuarial tables" means such tables as shall have been adopted by the board in accordance with recommendations of the actuary.

(5A) "Alternate payee" means a spouse or former spouse of a member who is recognized by an approved domestic retirement order as having a right to all or a portion of the accrued benefits in the retirement system with respect to such member.

(5B) "Approved domestic retirement order" means a domestic retirement order that creates or recognizes the existence of an alternate payee's right or assigns to an alternate payee the right to all or a portion of the accrued benefits of a member under the retirement system, that directs the system to establish a segregated account or disburse benefits to an alternate payee, and that the executive director of the retirement system has determined meets the requirements of sections [59-1319](#) and [59-1320](#), Idaho Code.

(5C) "Average monthly salary" means the member's average salary during the base period as calculated pursuant to rules adopted by the retirement board.

(5D) (a) "Base period" means the period of fifty-four (54) consecutive calendar months during which the member earned:

- (i) The highest average salary; and
- (ii) Membership service of at least one-half (1/2) the number of months in the period, excluding months of service attributable to:
 - A. Military service;
 - B. Service qualifying as minimum benefit pursuant to section [59-1342](#) (5), Idaho Code; and
 - C. Worker's compensation income benefits.

(b) Effective October 1, 1993, the consecutive calendar months shall be forty-eight (48). Effective October 1, 1994, the consecutive calendar months shall be forty-two (42).

(c) Entitlement to a base period shall not vest until the effective date of that base period. The retirement benefits shall be calculated on the amounts, terms and conditions in effect at the date of the final contribution by the member.

(d) If no base period exists for a member, the member's average monthly salary shall be determined by the board, using standards not inconsistent with those established in this subsection.

(e) To assure equitable treatment for all members, salary increments inconsistent with usual compensation patterns may be disallowed by the board in determining average monthly salary and base period.

(6) "Beneficiary" means the person who is nominated by the written designation of a member, duly executed and filed with the board, to receive the death benefit.

(7) "Calendar year" means twelve (12) calendar months commencing on the first day of January.

(7A) "Contingent annuitant" means the person designated by a member under certain retirement options to receive benefit payments upon the death of the member. The person so designated must be born and living on the effective date of retirement.

(8) "Credited service" means the aggregate of membership service, prior service and disabled service.

(9) "Date of establishment" means July 1, 1965, or a later date established by the board or statute.

(10) "Death benefit" means the amount, if any, payable upon the death of a member.

(11) "Disability retirement allowance" means the periodic payment becoming payable to a member who meets all applicable eligibility requirements for disability retirement.

(12) "Disabled" means:

(a) That the member is prevented from engaging in any occupation or employment for remuneration or profit as a result of bodily injury or disease, either occupational or nonoccupational in cause, but excluding disabilities resulting from service in the armed forces of any country other than the United States, or from an intentionally self-inflicted injury; and

(b) That the member will likely remain so disabled permanently and continuously during the remainder of the member's life.

It is not necessary that a person be absolutely helpless or entirely unable to do anything worthy of compensation to be considered disabled. If the person is so disabled that substantially all the avenues of employment are reasonably closed to the person, that condition is within the meaning of "disabled." In evaluating whether a person is disabled, medical factors and non-medical factors including, but not limited to, education, economic and social environment, training and usable skills may be considered.

Refusal to submit to a medical examination ordered by the board before the commencement of a disability retirement allowance or at any reasonable time thereafter shall constitute proof that the member is not disabled. The board shall be empowered to select for such medical examination one (1) or more physicians or surgeons who are licensed to practice medicine and perform surgery. The fees and expenses of such examination shall be paid from the administration account of the fund. No member shall be required to undergo such examination more often than once each year after he has received a disability retirement allowance continuously for two (2) years.

(12A) "Disabled service" means the total number of months elapsing from the first day of the month next succeeding the final contribution of a member prior to receiving a disability retirement allowance to the first day of the month following the date of termination of such disability retirement allowance. During such period, the member shall remain classified in the membership category held during the month of final contribution. The total number of months of disabled service credited for a person first becoming disabled after the effective date of this chapter shall not exceed the excess, if any, of three hundred sixty (360) over the total number of months of prior service and membership service.

(12B) "Domestic retirement order" means any judgment, decree, or order, including approval of a property settlement agreement that relates to the provision of marital property rights to a spouse or former spouse of a member, and is made pursuant to a domestic relations law, including the community property law of the state of Idaho or of another state.

(13) "Early retirement allowance" means the periodic payment becoming payable to a member who meets all applicable eligibility requirements for early retirement.

(14) (A) "Employee" means:

(a) Any person who normally works twenty (20) hours or more per week for an employer, or a schoolteacher who works half-time or more for an employer and who receives salary for services rendered for such employer;

(b) Elected officials or appointed officials of an employer who receive a salary;

(c) A person who is separated from service with fewer than five (5) consecutive months of employment and who is reemployed or reinstated by the same employer within thirty (30) days; or

(d) A person receiving differential wage payments as defined in 26 U.S.C. 3401(h) on or after July 1, 2009. A differential wage payment generally refers to an employer payment to an employee called to active duty in the uniformed services for more than thirty (30) days that represents all or a portion of the compensation he would have received from the employer if he were performing services for the employer.

(B) "Employee" does not include employment as:

(a) A person rendering service to an employer in the capacity of an independent business, trade or profession; or

(b) A person whose employment with any employer does not total five (5) consecutive months; or

(c) A person provided sheltered employment or made-work by a public employer in an employment or industries program maintained for the benefit of such person; or

(d) An inmate of a state institution, whether or not receiving compensation for services performed for the institution; or

(e) A student enrolled in an undergraduate, graduate, or professional-technical program at and employed by a state college, university, community college or professional-technical center when such employment is predicated on student status; or

(f) A person making contributions to the director of the office of personnel management under the United States civil service system retirement act except that a person who receives separate remuneration for work currently performed for an employer and the United States government may elect to be a member of the retirement system in accordance with rules of the board; or

(g) A person not under contract with a school district or charter school, who on a day-to-day basis works as a substitute teacher replacing a contracted teacher and is paid a substitute wage as established by district policy or who on a day-to-day basis works as a substitute assistant replacing a staff instruction assistant or a staff library assistant and is paid a substitute wage as established by district policy; or

(h) A person occupying a position that does not exceed eight (8) consecutive months in a calendar year with a city, county, irrigation district, cemetery district or mosquito abatement district when the city, county, irrigation district, cemetery district or mosquito abatement district has certified, in writing to the system, the position is: (i) seasonal or casual; and (ii) affected by weather, including parks, golf course positions and irrigation positions; or

(i) A person in a position that: (i) is eligible for participation in an optional retirement program established under section [33-107A](#) or [33-107B](#), Idaho Code, or (ii) would be eligible for participation in an optional retirement program established under section [33-107A](#) or

[33-107B](#), Idaho Code, if the person was not working less than half-time or fewer than twenty (20) hours per week.

(15) "Employer" means the state of Idaho, or any political subdivision or governmental entity, provided such subdivision or entity has elected to come into the system. Governmental entity means any organization composed of units of government of Idaho or organizations funded only by government or employee contributions or organizations that discharge governmental responsibilities or proprietary responsibilities that would otherwise be performed by government. All governmental entities are deemed to be political subdivisions for the purpose of this chapter. Provided however, that on and after the effective date of this act, all new employers added to the public employee retirement system must be in compliance with internal revenue regulations governing governmental retirement plans.

(15A) "Final contribution" means the final contribution made by a member pursuant to sections [59-1331](#) through [59-1334](#), Idaho Code.

(16) "Firefighter" means an employee, including paid firefighters hired on or after October 1, 1980, whose primary occupation is that of preventing and extinguishing fires as determined by the rules of the board.

(17) "Fiscal year" means the period beginning on July 1 in any year and ending on June 30 of the next succeeding year.

(18) "Fund" means the public employee retirement fund established by this chapter.

(19) "Funding agent" means any bank or banks, trust company or trust companies, legal reserve life insurance company or legal reserve life insurance companies, or combinations thereof, any thrift institution or credit union or any investment management firm or individual investment manager selected by the board to hold and/or invest the employers' and members' contributions and pay certain benefits granted under this chapter.

(20) "Inactive member" means a former active member who is not an employee and is not receiving any form of retirement allowance, who has not requested a separation benefit, or for whom a separation benefit has not become payable.

(20A) "Ineligible" means:

(a) Not eligible to participate and not required to contribute as an employee when:

(i) The employer is not a current member of the public employee retirement system of Idaho (PERSI);

(ii) The employee is not an employee as defined in subsection (14) of this section; or

(iii) The employee is participating in the judges retirement fund, the firefighters retirement fund or the optional retirement plan;

(b) Not eligible for retirement where there has been no termination of employment from an employer participating in PERSI, the judges retirement fund, the firefighters retirement fund or the optional retirement plan or a withdrawn employer; or

(c) Not eligible to receive a separation benefit where there has been no termination of employment from an employer participating in PERSI, the judges retirement fund, the firefighters retirement fund or the optional retirement plan or a withdrawn employer.

All state agencies, political subdivisions or governmental entities that qualify as an employer as defined in subsection (15) of this section or prior to April 4, 2017, were considered an employer and are currently

participating in PERSI are, for purposes of PERSI, deemed one (1) employer beginning on the effective date of this act.

(20B) "Lifetime annuity" means periodic monthly payments of income by the retirement system to an alternate payee.

(20C) "Lump sum distribution" means a payment by the retirement system of the entire balance in the alternate payee's segregated account, together with regular interest credited thereon.

(21) "Member" means an active member, inactive member or a retired member.

(22) "Membership service" means military service that occurs after the commencement of contributions payable under sections [59-1331](#) through [59-1334](#), Idaho Code, and service with respect to which contributions are payable under sections [59-1331](#) through [59-1334](#), Idaho Code, which, except for benefit calculations described in sections [59-1342](#) and [59-1353](#), Idaho Code, includes service transferred to a segregated account under an approved domestic retirement order.

(23) "Military service" means any period of active duty service in the armed forces of the United States including the national guard and reserves, under the provisions of title 10, title 32, and title 37, United States code, that commences fewer than ninety (90) days after the person ceases to be an employee and ends fewer than ninety (90) days before the person again becomes an employee. Provided, if a member fails to again become an employee as a result of his death while in active duty service, the member shall be entitled to military service through the date of death. Provided further, if a member fails to again become an employee due to a disability retirement resulting from service in the armed forces of the United States, the member shall be entitled to military service through the date the disability allowance becomes payable. In no event shall military service include:

(a) Any period ended by dishonorable discharge or during which termination of such service is available but not accepted; or

(b) Any active duty service in excess of five (5) years if at the convenience of the United States government, or in excess of four (4) years if not at the convenience of the United States government, provided additional membership service may be purchased as provided in section [59-1362](#), Idaho Code.

(24) (a) "Police officer" for retirement purposes shall be as defined in section [59-1303](#), Idaho Code.

(b) "POST" means the Idaho peace officer standards and training council established in [chapter 51, title 19](#), Idaho Code.

(25) "Prior service" means any period prior to July 1, 1965, of military service or of employment for the state of Idaho or any political subdivision or other employer of each employee who is an active member or in military service or on leave of absence on the date of establishment, provided, however, an employee who was not an active member or in military service or on leave of absence on the date of establishment shall receive credit for the member's service prior to July 1, 1965, on the basis of recognizing two (2) months of such service for each month of membership service. For the purpose of computing such service, no deduction shall be made for any continuous period of absence from service or military service of six (6) months or less.

(26) "Regular interest" means interest at the rate set from time to time by the board.

(27) "Retired member" means a former active member receiving a retirement allowance.

(28) "Retirement" means the acceptance of a retirement allowance under this chapter upon termination of employment and, unless otherwise provided by law, requires a termination of employment from an employer participating in PERSI, the judges retirement fund, the firefighters retirement fund or the optional retirement plan.

(29) "Retirement board" or "board" means the board provided for in sections [59-1304](#) and [59-1305](#), Idaho Code, to administer the retirement system.

(30) "Retirement system" or "system" means the public employee retirement system of Idaho.

(31) (A) "Salary" means:

(a) The total salary or wages paid to a person who meets the definition of employee by an employer for personal services performed and reported by the employer for income tax purposes, including the cash value of all remuneration in any medium other than cash.

(b) The total amount of any voluntary reduction in salary agreed to by the member and employer where the reduction is used as an alternative form of remuneration to the member.

(B) Salary in excess of the compensation limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded for any person who becomes a member of the system on or after July 1, 1996. The system had no limitations on compensation in effect on July 1, 1993. The compensation limitations set forth in section 401(a)(17) of the Internal Revenue Code shall not apply for an "eligible employee." For purposes of this subsection, "eligible employee" is an individual who was a member of the system before July 1, 1996.

(C) "Salary" does not include:

(a) Contributions by employers to employee-held medical savings accounts, as those accounts are defined in section [63-3022K](#), Idaho Code.

(b) Lump sum payments inconsistent with usual compensation patterns made by the employer to the employee only upon termination from service including, but not limited to, vacation payoffs, sick leave payoffs, early retirement incentive payments and bonuses.

(c) Differential wage payments as defined in 26 U.S.C. 3401(h). A differential wage payment generally refers to an employer payment to an employee called to active duty in the uniformed services for more than thirty (30) days that represents all or a portion of the compensation he would have received from the employer if he were performing services for the employer.

(d) Employer payments to employees for or related to travel, mileage, meals, lodging or subsistence expenses, without regard to the taxability of such payments for federal income tax purposes and without regard to the form of payment, including payment made as reimbursement of an itemized expense voucher and payment made of an unvouchered expense allowance.

(31A) "Segregated account" means the account established by the retirement system for the alternate payee of a member who is not a retired member. It shall include the months of credited service and accumulated contributions transferred from the member's account.

(32) "Separation benefit" means the amount, if any, pursuant to section [59-1359](#), Idaho Code.

(33) "Service" means being shown on an employer's payroll as an employee receiving a salary. For each calendar month, service is credited only when a member is an employee as defined in subsection (14) (A) of this section and is

employed for fifteen (15) days or more during the calendar month. Employment of fourteen (14) days or less during any calendar month shall not be credited. No more than one (1) month of service shall be credited for all service in any month.

(34) "Service retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for service retirement.

(35) "State" means the state of Idaho.

(35A) "Termination from employment" means the employee has separated from employment, the employee has ended service with the employer and the employer has notified PERSI of the termination.

(36) "Vested member" means an active or inactive member who has at least five (5) years of credited service, except that a member, who at the time of his separation from service:

(a) Held an office to which he had been elected by popular vote or having a term fixed by the constitution, statute or charter or was appointed to such office by an elected official; or

(b) Was the head or director of a department, division, agency, statutory section or bureau of the state; or

(c) Was employed on or after July 1, 1965, by an elected official of the state of Idaho and occupied a position exempt from the provisions of [chapter 53, title 67](#), Idaho Code; and

(d) Was not covered by a merit system for employees of the state of Idaho;

is vested without regard to the length of credited service.

(37) The masculine pronoun, wherever used, shall include the feminine pronoun.

[59-1302, added 1963, ch. 349, Art. 1, sec. 2, p. 988; am. 1965, ch. 265, sec. 1, p. 682; am. 1967, ch. 398, sec. 1, p. 1184; am. 1969, ch. 283, sec. 1, p. 856; am. 1969, ch. 460, sec. 1, p. 1288; am. 1970, ch. 153, sec. 1, p. 473; am. 1971, ch. 49, sec. 1, p. 105; am. 1972, ch. 245, sec. 1, p. 636; am. 1974, ch. 57, sec. 2, p. 1118; am. 1975, ch. 217, sec. 1, p. 604; am. 1976, ch. 97, sec. 1, p. 404; am. 1979, ch. 158, sec. 1, p. 479; am. 1984, ch. 132, sec. 1, p. 309; am. 1985, ch. 84, sec. 1, p. 164; am. 1986, ch. 147, sec. 1, p. 409; am. 1987, ch. 346, sec. 1, p. 735; am. 1989, ch. 189, sec. 1, p. 465; am. 1989, ch. 190, sec. 1, p. 469; am. 1990, ch. 130, sec. 1, p. 300; am. 1990, ch. 231, sec. 2, p. 613; am. 1990, ch. 249, sec. 1, p. 702; am. 1991, ch. 61, sec. 1, p. 140; am. 1992, ch. 220, sec. 1, p. 658; am. 1992, ch. 342, sec. 1, p. 1038; am. 1993, ch. 350, sec. 2, p. 1296; am. 1994, ch. 209, sec. 1, p. 658; am. 1994, ch. 276, sec. 1, p. 856; am. 1994, ch. 411, sec. 1, p. 1296; am. 1995, ch. 143, sec. 1, p. 607; am. 1996, ch. 59, sec. 1, p. 170; am. 1996, ch. 79, sec. 1, p. 252; am. 1996, ch. 112, sec. 1, p. 415; am. 1997, ch. 72, sec. 1, p. 148; am. 1997, ch. 218, sec. 1, p. 643; am. 1998, ch. 22, sec. 1, p. 128; am. 1999, ch. 198, sec. 1, p. 508; am. 1999, ch. 199, sec. 1, p. 519; am. 1999, ch. 329, sec. 39, p. 879; am. 2002, ch. 46, sec. 1, p. 102; am. 2004, ch. 232, sec. 1, p. 679; am. 2004, ch. 294, sec. 1, p. 818; am. 2007, ch. 44, sec. 1, p. 105; am. 2010, ch. 143, sec. 1, p. 300; am. 2010, ch. 182, sec. 1, p. 371; am. 2011, ch. 100, sec. 1, p. 240; am. 2011, ch. 100, sec. 2, p. 245; am. 2011, ch. 100, sec. 3, p. 251; am. 2012, ch. 31, sec. 1, p. 90; am. 2012, ch. 217, sec. 1, p. 590; am. 2013, ch. 187, sec. 13, p. 457; am. 2017, ch. 235, sec. 1, p. 576; am. 2018, ch. 235, sec. 1, p. 548.]

59-1303. POLICE OFFICER MEMBER STATUS. (1) As used in this chapter, each of the terms used in this section shall have the meaning given in this section unless a different meaning is clearly required by the context.

(2) Police officer membership status for retirement purposes may be fixed only by law.

(3) Members holding or filling the following positions or offices are designated by law as having police officer member status for retirement purposes during the time of their appointment to that position or during their term of office:

(a) Idaho state police:

- (i) The director and deputy director of the Idaho state police;
- (ii) Commissioned and sworn troopers, specialists (detectives), and POST training coordinators;
- (iii) Commissioned and sworn personnel in a supervisory capacity as major, captain, lieutenant, or sergeant; and
- (iv) The commissioned state brand inspector, deputy brand inspectors, and brand inspector supervisors;

(b) County law enforcement:

- (i) County sheriffs;
- (ii) "Peace officers" and "county detention officers" as defined in [chapter 51, title 19](#), Idaho Code; and
- (iii) Supervisory "peace officers" and "county detention officers" as defined in [chapter 51, title 19](#), Idaho Code;

(c) City law enforcement:

- (i) City police chiefs;
- (ii) "Peace officers" as defined in [chapter 51, title 19](#), Idaho Code; and
- (iii) Supervisory "peace officers" as defined in [chapter 51, title 19](#), Idaho Code;

(d) Conservation officers, the enforcement assistant chief, and enforcement bureau chief of the department of fish and game;

(e) Department of correction:

- (i) The director and deputy director of the department of correction, the division chief and deputy division chief for probation and parole, and the wardens and deputy wardens of institutions;
- (ii) Correctional officers, presentence investigators, correctional officers in the supervisory capacity of lieutenant, sergeant, corporal, correctional specialist, correctional specialist supervisor, and correctional managers;
- (iii) Probation and parole supervisors, probation and parole investigators, and probation and parole officers; and
- (iv) Correctional peace officer training instructors;

(f) Employees of the adjutant general and military division of the state where military membership is a condition of employment;

(g) Magistrates of the district court; justices of the supreme court, judges of the court of appeals, and district judges who have made an election under section [1-2011](#), Idaho Code; and court employees designated by court order to have primary responsibility for court security or transportation of prisoners;

(h) Employees whose primary function requires that they are certified by the Idaho department of health and welfare as an emergency medical technician-basic, an advanced emergency medical technician-ambulance,

an emergency medical technician-intermediate, or an emergency medical technician-paramedic;

(i) Criminal investigators of the attorney general's office, and criminal investigators of a prosecuting attorney's office; and

(j) The director of security and the criminal investigators of the Idaho state lottery.

(4) On and after July 1, 1985, no active member shall be classified as a police officer for retirement purposes unless the employer shall have certified to the board, on a form provided by the board, that such member is an employee whose primary position with the employer is one designated as such within the meaning of this chapter, and the board shall have accepted such certification. Acceptance by the board of an employer's certification shall in no way limit the board's right to review and reclassify the position for retirement purposes based upon an audit or other relevant information presented to the board. The board may carry out such acts as are necessary to enforce the provisions of this chapter.

(5) A member classified as a police officer for retirement purposes whose position is reclassified to that of a general member for retirement purposes as a result of a determination that the position does not meet the requirements of this chapter for police officer member status for retirement purposes shall become a general member. Excess employer and employee contributions shall be refunded to the employer by offsetting future contributions and the member's record shall be corrected. It shall be the employer's responsibility to refund employee contributions directly to the employee.

[59-1303, added 2020, ch. 136, sec. 2, p. 422.]

59-1304. RETIREMENT BOARD -- APPOINTMENT. (1) There is hereby created in the office of the governor a governing authority of the system to consist of a board of five (5) persons known as the retirement board. Each member of the board shall be appointed by the governor to serve a term of five (5) years. The governor shall designate one (1) member of the board to serve as chairman.

(2) Two (2) board members shall be appointed from among active members having at least ten (10) years of credited service.

(3) Three (3) board members shall be appointed from among Idaho citizens who are not members of the system except by reason of having served on the board.

(4) Members of the board shall be compensated as provided by section [59-509](#)(h), Idaho Code. These allowances shall be paid from the administration account of the fund.

(5) A board member shall serve until his successor qualifies. Each board member shall be entitled to one (1) vote, and three (3) board members shall constitute a quorum. Three (3) votes shall be necessary for resolution or action by the board at any meeting except as otherwise provided in this chapter.

(6) The board shall hold regular meetings and shall hold special meetings at such times and at such places as it deems necessary. All meetings of the board shall be open to the public. The board shall keep a record of all its proceedings.

[(59-1304) 1963, ch. 349, Art. 8, sec. 1, p. 988; am. 1969, ch. 283, sec. 11, p. 856; am. 1974, ch. 22, sec. 45, p. 592; am. 1974, ch. 57,

sec. 16, p. 1118; am. 1976, ch. 355, sec. 1, p. 1170; am. 1980, ch. 247, sec. 78, p. 646; am. 1988, ch. 234, sec. 1, p. 462; am. and redesign. 1990, ch. 231, sec. 4, p. 620.]

59-1305. POWERS AND DUTIES OF BOARD -- INDEMNIFICATION. (1) The board shall have the power and duty, subject to the limitations of this chapter, of managing the system. It shall have the powers and privileges of a corporation, including the right to sue and be sued in its own name as such board. Members of the retirement board, retirement system staff and retirement system mortgage and investment committee members shall, jointly and individually, be provided a defense and indemnified against all claims, demands, judgments, costs, charges and expenses, including court costs and attorney's fees, and against all liability losses and damages of any nature whatsoever that arise out of and in the course and scope of their official duties and functions, but only if the defense and indemnity for such person's wrongful act or omission are not provided by [chapter 9, title 6](#), Idaho Code, and the wrongful act or omission of the person was not intentional, willful or wanton misconduct, fraudulent, or a knowing violation of law. The board may, as a fiduciary of the trust, determine to provide a defense and indemnity hereunder. The board may, as a fiduciary of the trust, determine to refuse a defense, or disavow and refuse to pay any judgment against a board member, retirement system staff, or retirement system mortgage and investment committee member if it is determined that such person was not within the course and scope of his official duties and functions or his conduct was intentional misconduct, willful, wanton, fraudulent, or a knowing violation of the law. Any defense and indemnity provided under this section shall be an expense of the trust, and the board is authorized but not required to purchase insurance to protect against such risks notwithstanding any other provision of law. No contribution or indemnification, or reimbursement for legal fees and expenses related to such defense or indemnification, shall be sought from any person defended or indemnified under this section unless the court in which the underlying claim was brought finds that the act or omission of the person was outside the course and scope of his official duties and functions or was intentional, willful or wanton misconduct, fraudulent, or a knowing violation of law. Any action by the trust against a board member, retirement system staff, or mortgage and investment committee member, and any action by a person against the trust for contribution, indemnification or necessary legal fees and expenses shall be tried to the court in the same civil lawsuit brought on the claim against the retirement board member, retirement system staff, or retirement system mortgage and investment committee member. The venue of all actions in which the board is a party shall be Ada county, Idaho.

(2) The board shall appoint an executive director to serve at its discretion. The executive director shall be the secretary to the board, bonded as is required by the board and shall perform such duties as assigned by the board. The executive director shall be authorized to designate a staff member as acting director or secretary in the director's absence.

(3) The board shall authorize the creation of whatever staff it deems necessary for sound and economical administration of the system. The executive director shall hire the persons for the staff who shall hold their respective positions subject to the rules of a merit system for state employees. The salaries and compensation of all persons employed for purposes of

administering the system shall be fixed by the board and as otherwise provided by law.

(4) The board shall obtain all actuarial, audit, legal and medical services it deems appropriate for the system. It shall cause a competent actuary who is a member of the academy of actuaries and who is familiar with public systems of pensions to be retained on a consulting basis. The actuary shall be the technical advisor of the board on matters regarding the operation of the system. During the first year of operation of the system and at least once every four (4) years thereafter, the actuary shall make a general investigation of the suitability of the actuarial tables used by the system. The board shall adopt the actuarial tables and assumptions in use by the system and may change the same in its sole discretion at any time. The actuary shall make an annual valuation of the liabilities and reserves of the system, and an annual determination of the amount of contributions required from the employers under this chapter, and certify the results thereof to the board. The actuary shall also perform such other duties as may be assigned by the board. An independent financial audit shall be conducted annually or as frequently as otherwise determined by the board.

(5) The board shall establish the system's office or offices to be used for the meetings of the board and for the general purposes of the administrative personnel. The board shall provide for the installation of a complete and adequate system of accounts and records for administering this chapter. All books and records shall be kept in the system's offices.

(6) If the board determines that it has previously overpaid or underpaid benefits provided under this chapter or [chapter 14, title 72](#), Idaho Code, it shall correct the prior error. In the event of prior underpayment, the board shall forthwith pay the amount of the underpayment together with regular interest thereon. In the event of prior overpayment, the board may offset future benefit payments by the amount of the prior overpayment together with regular interest thereon. Any such decision to offset future benefit payments shall be administratively and judicially reviewable as provided in section [59-1314](#), Idaho Code. Nothing herein contained shall be construed to limit the rights of a member or the board to pursue any other remedy provided by law.

[(59-1305) 1963, ch. 349, Art. 8, sec. 2, p. 988; am. 1965, ch. 265, sec. 3, p. 682; am. 1969, ch. 283, sec. 12, p. 856; am. 1971, ch. 49, sec. 11, p. 105; am. 1985, ch. 4, sec. 1, p. 8; 1990, am. and redesignated, ch. 231, sec. 5, p. 620; am. 1991, ch. 61, sec. 2, p. 144; am. 1993, ch. 350, sec. 3, p. 1301; am. 2005, ch. 90, sec. 1, p. 307; am. 2006, ch. 268, sec. 1, p. 834.]

59-1306. CONFORMITY WITH FEDERAL TAX CODE TO MAINTAIN QUALIFIED PLAN TAX STATUS. [Chapter 13, title 59](#), and [chapter 14, title 72](#), Idaho Code, shall be administered in a manner so as to comply with the requirements of 26 U.S.C. section 401(a)(8), (9), (16), (25), (31), (36) and (37) and with the vesting requirements described in 26 U.S.C. section 411(e)(2). The public employee retirement system board shall promulgate rules and amend or repeal conflicting rules in order to assure compliance with the requirements of these sections. This chapter shall be in full force and effect only so long as compliance with paragraphs (8), (9), (16), (25), (31), (36) and (37) of subsection 401(a) and paragraph (2) of subsection 411(e) of the Internal Revenue Code is required for public retirement systems. If compliance with

any such paragraph is, at any point no longer required, this provision or the applicable portion thereof, will cease to have any force or effect.

[(59-1306) 1989, ch. 185, sec. 2, p. 461; 1990, am. and redesignated, ch. 231, sec. 6, p. 621; am. 1998, ch. 193, sec. 1, p. 697; am. 2014, ch. 87, sec. 1, p. 237.]

59-1307. AGREEMENTS WITH OTHER RETIREMENT SYSTEMS. The board may enter into agreements with the boards or other authorities of other retirement systems operated by the state of Idaho or by political subdivisions to protect the retirement rights or benefits of employees who may alter their membership status by changing employment from one agency to another.

[(59-1307) 1963, ch. 349, Art. 3, sec. 3, p. 988; am. and redesignig. 1990, ch. 231, sec. 7, p. 621.]

59-1308. SUPPLEMENTAL BENEFIT PLAN -- CONTRIBUTIONS AND EXPENSES OF THE SUPPLEMENTAL BENEFIT PLAN -- INDEMNIFICATION. (1) The state shall sponsor and the board shall administer one (1) or more supplemental benefit plans to be used for allocation of extraordinary gains as provided in section [59-1309](#), Idaho Code, and for voluntary contributions of active members. The supplemental plans may be established under the qualified requirements of section 401(a) of the Internal Revenue Service Code and with the qualified cash or deferred arrangements under section 401(k) of the Internal Revenue Service Code or any other tax-deferred plan permitted by law, as determined by the retirement board. The board is authorized to secure such qualified staff and consultants as it determines necessary to establish and administer such plans. Employee and employer contributions shall be permitted according to the provisions of these plans as established by the board. For purposes of this section "employee" shall mean a participant as defined in the supplemental benefit plan documents or board rules.

(2) The board is authorized, but not required, to establish separate trust funds to hold the assets of the supplemental benefit plans created under this section. The investment options available under supplemental benefit plans shall be determined by the board, and may include, but are not limited to, investment in all or part of the public employee retirement fund and use of private vendor options.

(3) Supplemental benefit plans shall be available to all active members and shall be in addition to any other retirement or tax-deferred compensation system established by the employer. The board may provide educational opportunities related to supplemental benefit plans and retirement savings, as determined by the board.

(4) Accounts shall be established in supplemental benefit plans for all active members eligible for an extraordinary gains transfer under section [59-1309](#), Idaho Code. After the initial transfer of extraordinary gains, any active member may make additional voluntary contributions to his/her account, subject to applicable limitations, by authorizing his/her employer to contribute an amount by payroll deduction to the supplemental benefit plan in lieu of receiving such amount as salary. The amount of such contributions shall be subject to any limitations established by the board, state or federal law. The employer shall provide coordination of contributions between multiple plans to assure that contribution limits are not exceeded. Should aggregate contributions to multiple plans exceed applicable limits, excess contributions shall be deemed to apply exclusively to plans not

created by this chapter. In the event a preexisting plan is used as a supplemental plan, voluntary contributions may continue to be made to that plan despite the absence of extraordinary gains transfers.

(5) For purposes of this section the employer is authorized to make such deductions from salary for any employee who has authorized such deductions in writing. The employer shall forward all contributions under this section to the board by the fifth working day after each payroll, in addition to reports as directed by the board. Any costs incurred by the board, whether direct or indirect, due to an employer's failure to properly withhold, transfer, limit and report contributions, shall be the responsibility of the employer and shall be immediately due and payable upon notice from the board. This includes, but is not limited to, costs associated with plan corrections. Such costs shall be treated as delinquent contributions under section [59-1325](#), Idaho Code.

(6) The board may enter into agreements with employers or require participation to implement the supplemental benefit plans and the board may designate administrative agents to execute all necessary agreements pertaining to the supplemental benefit plans.

(7) All contributions received from participants in the supplemental benefit plans shall be deposited with a trustee designated by the board. All such funds are hereby perpetually appropriated to the board, shall not be included in the department's budget, and may be invested or used to pay for investment and administrative expenses of the supplemental benefit plans. Inactive members may be required to transfer supplemental benefit plan account balances as determined by the board.

(8) The board may establish rules to implement and administer supplemental benefit plans. Costs of administration shall be appropriated by the legislature and may be paid from the interest earnings of the funds accrued as a result of the deposits or as an assessment against each account, to be decided by the board. Investment related expenses are exempt from appropriation.

(9) Contributions and investment earnings under the supplemental benefit plans shall be exempt from federal and state income taxes until the ultimate distribution of such contributions. Distributions of funds held in supplemental benefit plan accounts are subject to federal law limitations. The board may provide for retirement disbursement options other than lump sum payments.

(10) All additional contributions made by the employee under this section shall continue to be included as regular compensation for the purpose of computing the employer and employee retirement contributions and pension benefits earned by an employee under this chapter, but such sum shall not be included in the computation of any income taxes withheld on behalf of any employee. However, funds accrued in a supplemental benefit plan account shall not be considered in determining any other benefits under this chapter.

(11) The provisions of sections [59-1316](#) and [59-1317](#)(1), (2) and (5), Idaho Code, shall also apply to the supplemental benefit plans created under this section. Should a court order that an assignment be made to a participant's spouse or former spouse of all or part of an account created under this section, the assignment shall be separate and distinct from any approved domestic retirement order required by section [59-1317](#)(4), Idaho Code. Requirements for assignments of supplemental accounts may be set forth in rule or other plan documents.

(12) Members of the retirement board or retirement system staff shall, jointly or individually, be provided a defense and indemnified against all claims, demands, judgments, costs, charges and expenses, including court costs and attorney's fees, and against all liability losses and damages of any nature whatsoever arising out of and in the course and scope of their official duties and functions in administering any plans created pursuant to the provisions of this section to the same extent as provided in section [59-1305](#)(1), Idaho Code. The venue of all actions in which the retirement board or retirement staff is a party shall be in Ada county, Idaho.

[59-1308, added 1995, ch. 120, sec. 1, p. 520; am. 2000, ch. 208, sec. 1, p. 529; am. 2001, ch. 89, sec. 1, p. 227; am. 2006, ch. 268, sec. 2, p. 835.]

59-1309. ALLOCATION OF EXTRAORDINARY GAINS. (1) At the close of each fiscal year, the board shall determine whether the fund has experienced extraordinary gains. If extraordinary gains exist the board may allocate all or part of them as set forth in this section. In determining whether extraordinary gains should be allocated, the board shall exercise its fiduciary discretion.

(2) Extraordinary gains are defined as the excess, if any, at the close of the fiscal year of plan assets over the plan's accrued actuarially determined liabilities plus a sum necessary to absorb a one (1) standard deviation market event without increasing contribution rates, as determined by the board.

(3) If the board determines that extraordinary gains should be allocated, the gains shall be allocated to retirees, to active members, and to employers in such proportion as determined by the board. The board shall determine no later than the first day of December following the close of the fiscal year the amount of extraordinary gains to be allocated, if any.

(4) Retirees shall receive their allocation in the form of a one-time payment made in addition to their regular monthly benefit payments. For purposes of this section, "retirees" include retired members, members receiving a disability retirement allowance, contingent annuitants, and surviving spouses who elected the annuity option under section [59-1361](#)(5), Idaho Code. To participate in the retiree allocation, a retiree must be receiving a regular monthly allowance at the close of the fiscal year and on the date of distribution. The retiree allocation shall be distributed proportionally based on the final monthly retirement allowance of the fiscal year divided by the total of all monthly retirement allowances paid for the same month. The date of distribution shall be no later than the first day of February following the close of the fiscal year.

(5) Active members shall receive their allocation as a transfer of funds to a supplemental retirement account established by the board. Funds transferred to or held in supplemental retirement accounts shall be accounted for separately and shall not be considered in determining any other benefits under this chapter. To participate in the active member allocation, the member must have been an active member on the last day of the fiscal year and have accrued at least twelve (12) months of service on that date. Any member who has withdrawn contributions from the fund prior to the date of transfer is not eligible to receive a transfer under this section. The active member allocation shall be distributed proportionally based on accumulated contributions at the close of the fiscal year divided by the total accumulated contributions of all active members at the close of

the fiscal year, not to exceed the amount that would result by applying the limits imposed by rule or by section 415(c) (1) of the Internal Revenue Code to compensation earned during the fiscal year. The transfer of funds shall occur in the following calendar year but shall be subject to reduction and forfeiture, based on the application of limits imposed by rule or by section 415 of the Internal Revenue Code for that year.

(6) Employers shall receive their allocation as a credit against future contributions required by section [59-1325](#), Idaho Code. Credits are not available to any employer who has withdrawn from participation in the fund prior to the transfer date. The employer allocation shall be credited proportionally based on employer contribution liability accrued during the fiscal year as provided in section [59-1322](#), Idaho Code, divided by the total employer contribution liability for the fiscal year. The credits shall be established no later than the first day of February following the close of the fiscal year. The credits shall be applied thereafter in the same manner as provided in section [59-1325](#), Idaho Code, until exhausted. If, after twelve (12) months of remittances, an employer's credits have not been exhausted, and the employer has not withdrawn from participation in the fund, the value of the remaining credits shall carry over to the next year, together with an interest payment equal to regular interest on the remaining credits.

[59-1309, added 2000, ch. 208, sec. 2, p. 531.]

59-1310. ADMISSIBILITY IN EVIDENCE OF PHOTOREPRODUCED COPIES OF RECORDS OR DOCUMENTS MAINTAINED BY THE SYSTEM -- DESTROYING THE ORIGINAL. Copies of records or documents maintained on microfilm, microfiche, computer imagery or other photoreproductive material of archival quality by the retirement system shall be as admissible in evidence as the original itself in any legal, judicial or administrative proceeding, or action, provided the custodian of records of the retirement system certifies on such copies offered into evidence that the retirement system is not in possession of the original and that the copy is a true and correct representation of the original. The original may be destroyed by the retirement system once the original is microfilmed, microfiched, digitally imaged or copied by other photoreproduction of archival quality.

[59-1310, added 1996, ch. 79, sec. 2, p. 257; am. 1999, ch. 198, sec. 2, p. 514.]

59-1311. PUBLIC EMPLOYEE RETIREMENT FUND CREATED -- ADMINISTRATION -- PAYMENT OF BENEFITS -- PERPETUAL APPROPRIATION. (1) There is hereby established in the state treasury a special fund, the "Public Employee Retirement Fund," which shall be separate and apart from all public moneys or funds of this state and shall be administered under the direction of the board exclusively for the purposes of this chapter. The state treasurer shall maintain within the fund a clearing account, a portfolio investment expense account and an administration account.

(2) All contributions received from employers by the board on their account and on account of members shall be deposited with a funding agent designated by the board. All such funds are hereby perpetually appropriated to the board and shall not be included in the department's administration account budget and shall be invested or used to pay for investment-related expenses.

(3) As needed to pay current obligations, the board shall transfer funds from the funding agent to the state treasurer's office for deposit into the administration account. All funds deposited in the administration account shall be available to the board for the payment of administrative expenses only to the extent so appropriated by the legislature.

(4) As required by the board, the funding agent shall transfer funds to the state treasurer's office for deposit into the portfolio investment expense account for payment of investment expenses. The funds deposited in the portfolio investment expense account shall be used for payment of investments and investment-related and actuarial-related expenses. Such expenses shall include but not be limited to:

- (a) Reporting services;
- (b) Investment and actuarial advisory services;
- (c) Funding agent fees and money management fees; and
- (d) Investment and actuarial staff expenses including hiring of investment and actuarial management personnel. Investment and actuarial management personnel are defined as staff positions that are classified at pay grades N through V by the division of human resources.

Investment and actuarial management personnel shall be exempt from the provisions of [chapter 53, title 67](#), Idaho Code, and section [67-3519](#), Idaho Code, and shall be hired by and serve at the pleasure of the board. All expenses of the portfolio investment expense account shall be reported on a quarterly basis to the legislature and to the division of financial management in the office of the governor.

(5) As required by the board, the funding agent shall transfer funds to the state treasurer's office for deposit into the clearing account. All benefits for members shall be payable directly from the clearing account or by the funding agent as they come due. If the amount of such benefits payable at any time exceeds the amount in the clearing account, the payment of all or part of such benefits may be postponed until the clearing account becomes adequate to meet all such payments, or the board may require a refund from the funding agent sufficient to meet all such payments.

(6) Moneys representing member entitlements that remain unclaimed after reasonable attempts to effect payment shall remain in the retirement fund available for payment to the member or other established rightful payee.

[(59-1311) 1963, ch. 349, Art. 9, sec. 2, p. 988; am. 1980, ch. 51, sec. 2, p. 106; am. 1985, ch. 168, sec. 5, p. 448; am. 1989, ch. 186, sec. 1, p. 461; am. and redesign. 1990, ch. 231, sec. 9, p. 622; am. 1992, ch. 220, sec. 3, p. 662; am. 1996, ch. 79, sec. 3, p. 257; am. 2020, ch. 137, sec. 1, p. 424.]

59-1312. SELECTION OF FUNDING AGENT(S) -- INVESTMENT OF ASSETS -- TAX EXEMPTION. (1) The board shall select the funding agent(s) and establish a medium for funding, which may be a self-administration pension trust fund or a group annuity contract, or combination thereof. The contract shall authorize the funding agent(s) to hold and, subject to the provisions of subsections (2) and (3) of this section, to invest moneys for the system and to provide the retirement benefits and death benefits for retired members granted by this chapter.

(2) The board is authorized to select investment managers registered with the Securities and Exchange Commission to invest, reinvest and otherwise manage, subject to the restrictions outlined in subsection (3) of this

section, such portions of the assets of the fund as are assigned by the board and are held by a funding agent(s) designated by the board.

(3) The funding agent(s) and investment managers, in acquiring, investing, reinvesting, exchanging, retaining, selling and managing the moneys and properties of the system, shall be governed by the Uniform Prudent Investor Act, [chapter 5, title 68](#), Idaho Code; provided, however, that the board is hereby authorized and empowered, in its sole discretion, to limit, control and designate the types, kinds and amounts of such investments. The funding agent(s) will not be required to segregate moneys applicable to individual employees or employers, but shall only be responsible for the aggregate of such moneys as are received by it.

(4) All contributions paid to the funding agent(s) shall be construed as being exempt from premium taxes payable pursuant to section [41-402](#), Idaho Code.

[(59-1312) 1963, ch. 349, Art. 8, sec. 3, p. 988; am. 1965, ch. 265, sec. 4, p. 682; am. 1986, ch. 147, sec. 5, p. 415; 1990, am. and redesignated, ch. 231, sec. 10, p. 623; am. 1997, ch. 14, sec. 5, p. 18.]

59-1313. TRUST AGREEMENT -- AMENDED TO COMPLY WITH THIS CHAPTER. The board may amend its trust agreement with the funding agent to comply with the requirements of this chapter.

[(59-1313) 59-1344, added 1967, ch. 115, sec. 9, p. 222; am. and redesignated 1990, ch. 231, sec. 11, p. 624.]

59-1314. RULES -- PROCEDURES FOR HEARINGS PRIOR TO APPEALS -- APPEALS. (1) Subject to other provisions of this chapter and pursuant to the policy and standards set out in section [59-1301](#), Idaho Code, the board shall have the power and authority to adopt, amend or rescind such rules and administrative policies as may be necessary for the proper administration of this chapter.

(2) A final decision of the board shall be served by first class and certified mail, postage paid, on all interested parties. Any person aggrieved by any otherwise final decision or inaction of the board must, before he appeals to the courts, file with the executive director of the board by mail or personally, within ninety (90) days after the service date of the final decision on the aggrieved party, a notice for a hearing before the board. The notice of hearing shall set forth the grounds of appeal to the board.

(3) A hearing shall be held before the board in Ada County, Idaho, at a time and place designated by the board or may be undertaken or held by or before any member(s) thereof or any hearing officer appointed by the board for that purpose. The proceedings before the board shall be governed by the provisions of [chapter 52, title 67](#), Idaho Code. Members of the board or the hearing officer shall have power to administer oaths, to preserve and enforce order during such hearings, to issue subpoenas for and to compel the attendance and testimony of witnesses or the production of books, papers, documents and other evidence and to examine witnesses.

(4) Every finding, order or award made by any member or hearing officer pursuant to such hearing, as confirmed or modified by the board, and ordered filed in its office, shall be deemed to be the finding, order or award of the board. The recommended order of the hearing officer shall be considered by the board and the decision and order of the majority of the members shall be the order of the board. Every such order rendered by the board shall be in

writing and a copy thereof shall be mailed by first class and certified mail to each party to the appeal and to his attorney of record.

(5) If any person in proceedings herein disobeys or resists any lawful order or process or misbehaves during a hearing, or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper, document or other evidence, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the board shall certify the facts to the district court having jurisdiction, and the court shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for contempt committed before the court, or commit such person upon the same conditions as if doing of the forbidden act had occurred with reference to the proceedings, or in the presence of the court.

(6) Any party aggrieved by a final order of the board may seek judicial review thereof pursuant to the provisions of [chapter 52, title 67](#), Idaho Code. The decision or judgment of the district court shall be subject to appeal to the Supreme Court in the same manner and by the same procedure as appeals are taken and perfected to the court in civil actions at law.

[(59-1314) 1963, ch. 349, Art. 8, sec. 4, p. 988; am. 1971, ch. 49, sec. 12, p. 105; am. 1984, ch. 132, sec. 6, p. 316; am. and redesignated 1990, ch. 231, sec. 12, p. 624; am. 1991, ch. 61, sec. 3, p. 145; am. 1993, ch. 216, sec. 96, p. 665; am. 1996, ch. 247, sec. 1, p. 781.]

59-1315. AMOUNT, TERMS AND CONDITIONS OF REVISED BENEFITS ARE TO BE PROSPECTIVE ONLY UNLESS OTHERWISE PROVIDED. As the amount, terms and conditions of benefits may be revised from time to time the application of such revisions shall be prospective only and not retrospective or retroactive unless otherwise provided by statute. Accordingly, unless otherwise provided, a member's benefits are determined based upon the terms of the plan on the date of the member's last contribution as an active member.

[(59-1315) 1971, ch. 49, sec. 15, p. 105; am. and redesign. 1990, ch. 231, sec. 13, p. 625; am. 2005, ch. 89, sec. 1, p. 306.]

59-1316. MEMBER'S RETIREMENT RECORDS CONFIDENTIAL. (1) Each member shall furnish the board with such information as the board shall deem necessary for the proper operation of the system. As provided in section [74-106](#), Idaho Code, information contained in the retirement system mortgage portfolio loan documents and in each member's retirement system records is confidential and may not be divulged except as ordered by a court; or except as may be required by the employer member or by the retirement board and its staff in order to carry into effect the purposes of this chapter.

(2) A member may by his written authorization release specific information from his own retirement system records to a stated designee. If the member is deceased, the member's contingent annuitant or beneficiary may, by written authorization, release specific information from the member's retirement system records to a stated designee.

(3) The retirement system may disclose the identity of a deceased member's beneficiary to the member's spouse, children, and to the court-appointed administrator of the member's estate.

(4) Should a court order direct distribution or partial distribution of a member's benefit as defined in either [chapter 13, title 59](#), Idaho Code, or [chapter 14, title 72](#), Idaho Code, to the member's spouse or former spouse, the system may release to the spouse, former spouse, or the court issuing the order, information pertaining to the division or segregation of the member's accounts or benefit. This information includes account balances, service accumulations, and related information and histories, but does not include current addresses and phone numbers. The system may release the same information to a member's current spouse at any time, regardless of whether a court has ordered a distribution or division of the member's account.

[59-1316, added 1988, ch. 275, sec. 1, p. 906; am. 1990, ch. 213, sec. 90, p. 553; am. and redesign. 1990, ch. 231, sec. 14, p. 625; am. 1990, ch. 249, sec. 7, p. 711; am. 1992, ch. 220, sec. 4, p. 664; am. 1996, ch. 103, sec. 1, p. 405; am. 2000, ch. 13, sec. 2, p. 27; am. 2001, ch. 90, sec. 1, p. 229; am. 2015, ch. 141, sec. 158, p. 501.]

59-1317. RIGHTS TO BENEFITS INALIENABLE. (1) The right of a person to any benefits under this chapter and the money in any fund created by this chapter shall not be assignable or subject to execution, garnishment or attachment or to the operation of any bankruptcy or insolvency law.

(2) Notwithstanding subsection (1) of this section, the benefits of a member or alternate payee shall be subject to garnishment, execution, or wage withholding under [chapter 12, title 7](#), Idaho Code, for the enforcement of an order for the support of a minor child.

(3) Notwithstanding subsection (1) of this section, prior to July 1, 1998, should a court order direct distribution or partial distribution of a member benefit defined in either [chapter 13, title 59](#), Idaho Code, or [chapter 14, title 72](#), Idaho Code, be made to the member's spouse or former spouse, that member's full benefit entitlement will be forwarded to the court for distribution.

(4) Notwithstanding subsection (1) of this section, on or after July 1, 1998, should a court order direct distribution or partial distribution of a member's benefit defined in either [chapter 13, title 59](#), Idaho Code, or [chapter 14, title 72](#), Idaho Code, be made to the member's spouse or former spouse, the court order must be an approved domestic retirement order and shall comply with the requirements of sections [59-1319](#) and [59-1320](#), Idaho Code.

(5) Notwithstanding subsection (1) of this section, should a court order establish a trust pursuant to section [15-5-409](#), Idaho Code, the full benefit entitlement will be forwarded to the trustee, naming the trustee as payee.

[(59-1317) 1963, ch. 349, Art. 7, sec. 1, p. 988; am. 1985, ch. 168, sec. 4, p. 448; am. 1986, ch. 221, sec. 5, p. 588; 1990, am. and redesignated, ch. 231, sec. 15, p. 625; am. 1996, ch. 102, sec. 1, p. 405; am. 1998, ch. 22, sec. 2, p. 134.]

59-1318. RIGHTS IN ASSETS OF SYSTEM LIMITED. No particular person, group of persons or entity shall have any right in any specific portion of the assets of the system other than such undivided interest in the whole of such assets as is specified in this chapter.

[(59-1318) 1963, ch. 349, Art. 9, sec. 4, p. 988; am. and redesign. 1990, ch. 231, sec. 16, p. 626.]

59-1319. APPROVED DOMESTIC RETIREMENT ORDERS -- REQUIREMENTS. (1) An approved domestic retirement order must meet the following requirements:

- (a) Clearly specify that such order applies to the retirement system;
 - (b) Clearly specify the effective date of the order, which is the date of divorce or the date of an earlier property settlement agreement incorporated into the initial divorce decree, the name, account number, date of birth, sex, and last known mailing address of the member and the name, date of birth, sex, and last known mailing address of the alternate payee covered by the order;
 - (c) Provide for a proportional reduction of the amount awarded to an alternate payee in the event that benefits available to the member are reduced by law;
 - (d) For benefits as defined in [chapter 13, title 59](#), Idaho Code, for members who are not retired members: (i) clearly specify the amount or percentage of the member's taxed and tax deferred accumulated contributions which are to be credited to the segregated account or the manner in which such amount or percentage is to be determined, and (ii) clearly specify the member's months of credited service, either by specific amount or percentage, to be transferred by the retirement system to the segregated account or the manner in which such amount or percentage is to be determined. The months of credited service transferred to the alternate payee shall be proportional to the accumulated contributions attributable to such months of credited service. Months of credited service transferred shall be whole months and not partial months;
 - (e) For benefits as defined in [chapter 13, title 59](#), Idaho Code, for retired members, clearly specify the amount or percentage of the member's benefit being paid that the retirement system is to pay to the alternate payee, or the manner in which such amount or percentage is to be determined, and if the alternate payee is the member's named contingent annuitant and is waiving all survivor benefits as the named contingent annuitant, clearly specify such waiver pursuant to this subsection; and
 - (f) For benefits as defined in [chapter 14, title 72](#), Idaho Code, clearly specify the amount or percentage of the member's benefit paid at the time of retirement which the retirement system is to pay to the alternate payee, or the manner in which such percentage is to be determined.
- (2) An approved domestic retirement order cannot:
- (a) Require the retirement system to provide any type or form of benefit or any option not otherwise provided under the retirement system;
 - (b) Require the retirement system to provide increased benefits determined on the basis of actuarial value;
 - (c) Require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be an approved domestic retirement order or a court order entered prior to July 1, 1998;
 - (d) Require any action on the part of the retirement system contrary to its governing statutes or rules other than the direct payment of the benefit awarded to an alternate payee;
 - (e) Segregate or attempt to segregate the right to reinstate previous credited service as provided in section [59-1360](#), Idaho Code, unless

such credited service has been fully reinstated by full payment of contributions and interest as provided in section [59-1360](#), Idaho Code;

(f) Purport to award to the alternate payee any future benefit increases that are provided or required by the legislature, except as provided in subsections (6) and (7) of section [59-1320](#), Idaho Code; or

(g) Require the payment of benefits to an alternate payee before the date on which the alternate payee attains the earliest retirement age under the retirement system. However, an alternate payee may take a lump sum distribution any time prior to receiving a lifetime annuity payment.

(3) In no event shall an approved domestic retirement order cause the retirement system to pay any benefit or any amount of benefit greater than would have been paid had the member's account not been segregated.

(4) A party to any domestic retirement order issued prior to July 1, 1998, which distributes benefits defined in either [chapter 13, title 59](#), Idaho Code, or [chapter 14, title 72](#), Idaho Code, may move the court to modify such order to comply with the requirements of this section and section [59-1320](#), Idaho Code, provided that modifications be limited to issues related to the distribution of benefits defined in either [chapter 13, title 59](#), Idaho Code, or [chapter 14, title 72](#), Idaho Code, and that the value of the distribution is not materially changed.

(5) The alternate payee's social security number shall be provided to the board before a domestic retirement order is approved under section [59-1320](#), Idaho Code, in a manner prescribed by the board.

[59-1319, added 1998, ch. 22, sec. 3, p. 134; am. 1999, ch. 198, sec. 3, p. 514; am. 2000, ch. 13, sec. 3, p. 28; am. 2004, ch. 212, sec. 1, p. 638; am. 2004, ch. 328, sec. 1, p. 980.]

59-1320. APPROVED DOMESTIC RETIREMENT ORDERS -- APPLICATION AND EFFECT. (1) The executive director of the public employee retirement system or his designee upon receipt of a copy of a domestic retirement order, shall determine whether the order is an approved domestic retirement order and shall notify the member and the alternate payee of the determination within ninety (90) days. Orders shall be applied prospectively only from the first day of the month following the order being determined to be an approved domestic retirement order. The retirement system shall then pay benefits or establish a segregated account in accordance with the order. When established, the segregated account will consist of accumulated contributions identified in the approved domestic retirement order together with accrued interest on that amount from the effective date to the date of segregation.

(2) If the order is determined not to be an approved domestic retirement order, or if no determination is issued within ninety (90) days, the member or the alternate payee named in the order may move the court which issued the order to amend the order so that it will be approved. The court that issued the order or which would otherwise have jurisdiction over the matter has jurisdiction to amend the order so that it will be qualified even though all other matters incident to the action or proceeding have been fully and finally adjudicated.

(3) The executive director of the retirement system to which a domestic retirement order is submitted or his designee has exclusive authority to determine whether a domestic retirement order is an approved domestic retirement order. If it is determined that a domestic retirement order does not meet the requirements for an approved domestic retirement order, both the

issuing court and the parties to the order shall be notified so action may be taken to amend the order.

(4) Because an approved domestic retirement order cannot cause the retirement system to pay any benefit or any amount of benefit greater than would have been paid had the member's account not been segregated, disputes related to benefits paid under an approved domestic retirement order shall be resolved between the parties to the order by the court issuing that order. The retirement system shall not be made a party to the action. Any cost, including attorney's fees, incurred by the retirement system as a result of such actions shall be distributed by the court among the parties and included in any amended order issued.

(5) Unless the approved domestic retirement order specifies differently, if the member has a right to a vested benefit as of the effective date of the order, then both the member and the alternate payee shall have a right to a vested benefit after the transfer of months of service even if the member or the alternate payee has less than sixty (60) months of membership service.

(6) For benefits under [chapter 13, title 59](#), Idaho Code, for members other than retired members, if the domestic retirement order awards to the alternate payee a portion of the member's accumulated contributions the alternate payee shall be entitled to all the same benefits and rights an inactive member has under [chapter 13, title 59](#), Idaho Code. The alternate payee's benefit calculation for a lifetime annuity shall use the member's average monthly salary and base period as of the effective date of the order and the months of credited service transferred to the alternate payee's segregated account. The benefit calculation shall use the alternate payee's age with the appropriate reduction factors based on the alternate payee's age at the time of payment of the lifetime annuity. For the purpose of the lifetime annuity, the bridging factor, as specified in section [59-1355](#), Idaho Code, shall be the bridging factor between the effective date of the order or the last day of contributions by the member prior to the effective date of the order, whichever is earliest, and the date of the first lifetime annuity payment to the alternate payee. The alternate payee shall have the right to select any of the optional retirement allowances provided in section [59-1351](#), Idaho Code. The alternate payee shall have the right to name a beneficiary.

(7) For benefits defined under [chapter 13, title 59](#), Idaho Code, for retired members, and for benefits under [chapter 14, title 72](#), Idaho Code, the retirement system shall include in the alternate payee's amount or percentage of the benefit, on a proportional basis, all future adjustments, including postretirement increases that are granted by the retirement system, and any death benefit.

(8) For benefits under [chapter 13, title 59](#), Idaho Code, for retired members, the form of payment previously elected by the member under section [59-1351](#), Idaho Code, cannot be changed by a domestic retirement order, except that a member's benefit may be adjusted as provided in section [59-1351](#)(2), Idaho Code, if an alternate payee waives all survivor benefits otherwise payable as a contingent annuitant as provided in section [59-1319](#)(1)(e), Idaho Code. Furthermore, no segregated account will be established by the retirement system for the alternate payee. Upon the death of the alternate payee, his/her percentage of the benefit will revert to the person or persons, including the member, who are entitled to the benefit under the system at the time of the alternate payee's death.

(9) For benefits defined under [chapter 14, title 72](#), Idaho Code, the benefit transferred to the alternate payee shall start when the retirement system begins paying benefits to the member, surviving spouse, or surviving children of the member. The transferred benefit shall be payable only for the lifetime of the alternate payee and it shall not revert to the member, surviving spouse or surviving children of the member.

(10) The retirement system shall be authorized to issue any and all appropriate tax forms or reports for any payments made to the alternate payee.

(11) The retirement system, the retirement board, and officers and employees of the retirement system shall not be liable to any person for making payments of any benefits in accordance with an approved domestic retirement order.

[59-1320, added 1998, ch. 22, sec. 4, p. 136; am. 1999, ch. 198, sec. 4, p. 516; am. 2004, ch. 328, sec. 2, p. 981; am. 2006, ch. 19, sec. 1, p. 71.]

59-1321. PROCEDURE FOR EMPLOYEES OF POLITICAL SUBDIVISIONS TO BE INCLUDED IN RETIREMENT SYSTEM. A political subdivision not participating in the system may, through its governing body, notify the board in writing that it elects to include its employees in the system. The board shall make a study and estimate the cost of including such employees in the system. Upon completion of the study and under the condition that the excess cost, if any, to include the employees as active members is paid upon admission, the political subdivision may apply for admission to the system. Payment of excess cost shall be made upon admission, unless the board in its sole discretion grants an extension. In no case shall an extension exceed two (2) years. Thereupon the board may upon such terms, not inconsistent with this chapter, as are set forth in a contract between the board and the political subdivision, integrate said political subdivision, and its employees into the system established by this chapter effective on the date of notice of election or later unless otherwise prohibited by law. The contract shall have no effect, however, until notice and hearing regarding it is afforded to such employees. Such contract shall provide for the appropriate funding of accrued benefits under any existing retirement program at the time the political subdivision is admitted to the system.

[(59-1321) 1963, ch. 349, Art. 3, sec. 4, p. 988; am. 1976, ch. 97, sec. 3, p. 409; am. 1987, ch. 164, sec. 1, p. 322; am. 1989, ch. 187, sec. 1, p. 463; am. and redesign. 1990, ch. 231, sec. 17, p. 626.]

59-1322. EMPLOYER CONTRIBUTIONS -- AMOUNTS -- RATES -- AMORTIZATION. (1) Each employer shall contribute to the cost of the system. The amount of the employer contributions shall consist of the sum of a percentage of the salaries of members to be known as the "normal cost" and a percentage of such salaries to be known as the "amortization payment." The rates of such contributions shall be determined by the board on the basis of assets and liabilities as shown by actuarial valuation, and such rates shall become effective no later than January 1 of the second year following the year of the most recent actuarial valuation, and shall remain effective until next determined by the board.

(2) The normal cost rate shall be computed to be sufficient, when applied to the actuarial present value of the future salary of the average new member entering the system, to provide for the payment of all prospective

benefits in respect to such member which are not provided by the member's own contribution.

(3) The amortization rate shall not be less than the minimum amortization rate computed pursuant to subsection (5) of this section, unless a one (1) year grace period has been made effective by the board. During a grace period, the amortization rate shall be no less than the rate in effect during the immediately preceding year. A grace period may not be made effective if more than one (1) other grace period has been effective in the immediately preceding four (4) year period.

(4) Each of the following terms used in this subsection and in subsection (5) of this section shall have the following meanings:

(a) "Valuation" means the most recent actuarial valuation.

(b) "Valuation date" means the date of such valuation.

(c) "Effective date" means the date the rates of contributions based on the valuation become effective pursuant to subsection (1) of this section.

(d) "End date" means the date thirty (30) years after the valuation date until July 1, 1993. On and after July 1, 1993, "end date" means twenty-five (25) years after the valuation date.

(e) "Unfunded actuarial liability" means the excess of the actuarial present value of (i) over the sum of the actuarial present values of (ii), (iii), (iv) and (v) as follows, all determined by the valuation as of the valuation date:

(i) all future benefits payable to all members and contingent annuitants;

(ii) the assets then held by the funding agent for the payment of benefits under this chapter;

(iii) the future normal costs payable in respect of all then active members;

(iv) the future contributions payable under sections [59-1331](#) through [59-1334](#), Idaho Code, by all current active members;

(v) the future contributions payable to the retirement system under sections [33-107A](#) and [33-107B](#), Idaho Code.

(f) "Projected salaries" means the sum of the annual salaries of all members in the system.

(g) "Scheduled amortization amount" means the actuarial present value of future contributions payable as amortization payment from the valuation date until the effective date.

(5) The minimum amortization payment rate shall be that percentage, calculated as of the valuation date, of the then actuarial present value of the projected salaries from the effective date to the end date which is equivalent to the excess of the unfunded actuarial liability over the scheduled amortization amount.

[(59-1322) 1963, ch. 349, Art. 9, sec. 1, p. 988; am. 1974, ch. 57, sec. 17, p. 1118; am. 1979, ch. 158, sec. 5, p. 485; am. 1980, ch. 51, sec. 1, p. 106; am. 1982, ch. 243, sec. 4, p. 630; am. 1984, ch. 132, sec. 7, p. 318; am. 1986, ch. 143, sec. 3, p. 401; am. 1986, ch. 146, sec. 1, p. 408; am. 1987, ch. 348, sec. 1, p. 763; am. 1988, ch. 237, sec. 1, p. 465; am. and redesig, 1990, ch. 231, sec. 18, p. 626; am. 1990, ch. 249, sec. 8, p. 712; am. 1992, ch. 342, sec. 5, p. 1047; am. 1999, ch. 271, sec. 1, p. 683.]

59-1324. TRANSFER OF MONEYS FROM STATE COMMUNITY COLLEGE ACCOUNT. After July 1, 1984, the state board of education shall, at the request of the board, direct the transfer from the state community college account or from appropriations made for that purpose to the public employee retirement account of an aggregate sum in lieu of and equivalent to individual employer contributions provided by section [59-1322](#), Idaho Code, required with respect to employees of community college districts on the basis of salaries paid such employees as certified by the board to the state treasurer.

[(59-1324) 59-1332B, added 1969, ch. 144, sec. 4, p. 466; am. 1984, ch. 180, sec. 6, p. 430; am. and redesisg. 1990, ch. 231, sec. 20, p. 628; am. 2013, ch. 187, sec. 14, p. 463.]

59-1325. EMPLOYER REMITTANCE TO BOARD -- COLLECTION OF DELINQUENCIES. (1) Each employer, or, where the employer's payroll is paid separately by departments, each department of the employer, shall remit to the retirement board all contributions required of it and its employees on the basis of salaries paid by it during each pay period together with whatever contributions or contribution credits may be required to correct previous errors or omissions. These remittances shall be accompanied by such reports as are required by the board to determine contributions required and member benefit entitlements established under this chapter and, unless extended in writing by the executive director, shall be remitted no later than five (5) days after each pay date. Such contributions shall be remitted together with contributions remitted pursuant to subsection (5) of section [59-1308](#), Idaho Code, as directed by the board. Thereafter, unpaid contributions shall be considered delinquent and interest will begin accruing at the greater of the rate of interest provided in section [28-22-104](#)(1), Idaho Code, or regular interest. The executive director may, in his discretion, waive these interest charges in extraordinary circumstances.

(2) If any employer shall fail or refuse to remit any such contributions within thirty (30) days after the date due, the board may certify to the state controller the fact of such failure or refusal and the amount of the delinquent contribution or contributions, together with interest. A copy of such certification and request shall be furnished the delinquent employer.

(3) The state controller shall deduct said amount as an offset, together with interest charges, from any funds payable then or in the future to the delinquent employer and shall pay such amounts to the retirement fund.

[(59-1325) 1963, ch. 349, Art. 9, sec. 3, p. 988; am. 1969, ch. 283, sec. 13, p. 856; am. 1971, ch. 49, sec. 13, p. 105; am. 1976, ch. 97, sec. 10, p. 414; am. 1977, ch. 178, sec. 8, p. 462; am. 1987, ch. 164, sec. 4, p. 324; am. and redesisg. 1990, ch. 231, sec. 21, p. 628; am. 1994, ch. 180, sec. 140, p. 511; am. 1999, ch. 195, sec. 1, p. 507; am. 2002, ch. 8, sec. 1, p. 11.]

59-1326. PROCEDURE FOR COMPLETE OR PARTIAL WITHDRAWAL OF POLITICAL SUBDIVISIONS FROM THE SYSTEM -- CALCULATION OF WITHDRAWAL LIABILITY -- INDEMNIFICATION. (1) A political subdivision, through its governing body, may by resolution adopted by two-thirds (2/3) of the members of the governing body, declare its intent to withdraw completely from the system and to submit the question of withdrawing from the system to the active members of the political subdivision. The political subdivision shall notify its employees and the retirement board, in writing, of its action, and shall

advise the active members of their right to vote for or against withdrawal, as provided in subsection (2) of this section. A political subdivision shall automatically be considered to have requested a complete withdrawal from the system the date the political subdivision permanently ceases to employ active members. A withdrawing political subdivision shall be required to make withdrawal liability payments as provided in this section.

(2) All active members of the withdrawing political subdivision shall be allowed to vote by secret ballot for or against allowing the political subdivision to completely withdraw from the system. More than fifty percent (50%) of the withdrawing political subdivision's active members must approve the complete withdrawal at least thirty (30) days before the effective withdrawal date. All active members of the withdrawing political subdivision who are on the political subdivision's payroll thirty (30) days before the effective withdrawal date shall be allowed to vote. If more than fifty percent (50%) of the withdrawing political subdivision's active members fail to vote for complete withdrawal, the political subdivision shall not be allowed to withdraw. Fifteen (15) days before the effective withdrawal date the governing board of the withdrawing political subdivision shall certify to the retirement board the results of the voting by the active members.

(3) Partial withdrawal occurs for a political subdivision when its average membership declines from one fiscal year to the next by more than twenty-five (25) members and twenty-five percent (25%) of the average membership in the earlier year. The effective date of partial withdrawal is the first day after the end of the later year.

"Average membership" for a fiscal year shall equal one-twelfth (1/12) of the sum of the number of active members employed during each month of that year.

(4) Complete withdrawal by a political subdivision shall be the first day of the month following the date the political subdivision ceases to employ active members or the first day of the month following sixty (60) days from the date the board receives the political subdivision's written request to withdraw. However, the complete withdrawal date shall not occur before the withdrawal liability is determined, as provided in subsection (7) of this section.

(5) After complete withdrawal, all employees of the withdrawing political subdivision shall be ineligible to accrue future benefits with the system due to employment with the withdrawing political subdivision. The withdrawing political subdivision shall be ineligible to request to be included in the system, as provided in section [59-1321](#), Idaho Code, for five (5) years after its complete withdrawal date.

(6) All active or inactive members of the political subdivision shall be eligible for benefits accrued with the system up to the complete withdrawal date. However, no retirement allowance or separation benefit shall be paid until the member actually separates from service with the withdrawing political subdivision, and there is no guarantee of right to re-employment made by the withdrawing political subdivision. If the person returns to employment with the same withdrawing political subdivision within ninety (90) days, any separation benefit or retirement allowance paid to the person shall be repaid to the system.

(7) On the date of complete withdrawal, the withdrawal liability of an employer is (a) multiplied by the ratio of (b) to (c) as follows:

(a) The excess of the actuarial present value of the vested accrued benefits of the system's members over the fair value of its assets, both

as of the date of the last actuarial valuation adopted by the board prior to the complete withdrawal date based on the assumption that thirty percent (30%) of all terminating employees will eventually return to employment covered by the system and that future cost-of-living allowances as provided in section [59-1355](#), Idaho Code, will be at a rate of two percent (2%) per year;

(b) The total present value of accrued benefits of all active members of the withdrawing political subdivision as of the last actuarial valuation adopted by the board prior to the complete withdrawal date;

(c) The total present value of accrued benefits of all active members of the system as of the last actuarial valuation adopted by the board prior to the complete withdrawal date.

The actuarial costs to determine the amount described in subsection (7) (b) of this section shall be paid by the withdrawing political subdivision.

(8) On the date of partial withdrawal, the withdrawal liability of an employer is the same as if complete withdrawal had occurred, multiplied by one (1) minus the ratio of (a) to (b) as follows:

(a) The average membership of the employer estimated by the board for the year commencing on such date;

(b) The average membership of the employer during the second complete fiscal year prior to such date.

(9) The withdrawing political subdivision shall enter into a contract with the system which establishes terms for the political subdivision's payment of its withdrawal liability. The contract shall use an interest rate equal to the interest rate used in the actuarial valuation adopted by the board prior to the withdrawal date, net of actuarially assumed investment expenses. The contract shall not extend the duration of the withdrawal liability payments beyond ten (10) years or the end of the current amortization period whichever is less. The contract shall be a financial obligation of the withdrawing political subdivision and any of its successors and assigns. "Current amortization period" means the period over which the amortization payment rate times the actuarial present value of the projected salaries is equivalent to the unfunded actuarial liability, all determined by the current valuation last adopted by the board prior to the complete withdrawal date.

(10) Upon the complete withdrawal of the political subdivision, the system shall have no further legal obligation to the political subdivision or its employees, nor shall the system be held accountable for the continued future accrual of any retirement benefit rights to which such employees may be entitled beyond the complete withdrawal date. Any litigation regarding the forfeiture of any benefits because of the political subdivision's complete withdrawal from the system shall be the sole legal responsibility of the withdrawing political subdivision and the withdrawing political subdivision shall indemnify and hold harmless the system, its board, its employees and the state of Idaho, from any claims, losses, costs, damages, expenses, and liabilities, including without limitation, court costs and reasonable attorney's fees, asserted by any person or entity as a result of the political subdivision's withdrawal from the system.

[(59-1326) 1981, ch. 152, sec. 1, p. 263; am. 1984, ch. 132, sec. 2, p. 313; am. and redesig. 1990, ch. 231, sec. 22, p. 628; am. 1992, ch. 220, sec. 5, p. 664; am. 1996, ch. 251, sec. 1, p. 792.]

59-1327. MAKING A FALSE CLAIM -- MISDEMEANOR. Any person making a false claim for allowance of benefits or payment of money under the provisions of this chapter, knowing the same to be false, shall be guilty of a misdemeanor and shall be punished pursuant to the provisions of section [18-113](#), Idaho Code.

[59-1327, added 1993, ch. 349, sec. 2, p. 1294.]

59-1328. ADMINISTRATIVE PENALTIES FOR FAILURE TO COMPLY WITH REPORTING REQUIREMENTS. The board may assess actual costs including staff salaries and benefits and miscellaneous costs such as computer programming and processing, as an administrative penalty against any employer which refuses or fails to comply with the board's reporting requirements after the system staff has attempted to obtain compliance for a period of three (3) months. After three (3) months, the actual administrative costs shall be monitored and the board may assess them directly against the noncomplying employer unit.

[59-1328, added 1993, ch. 348, sec. 1, p. 1294.]

59-1329. BOARD REGULATIONS. The board is authorized to promulgate rules providing for imposition of interest on delinquent employee contributions.

[59-1329, added 1993, ch. 350, sec. 4, p. 1302.]

59-1331. CONTRIBUTIONS. (1) Beginning on or after the later of the date of establishment or employment, each active member shall contribute toward the cost of the benefits provided under this chapter. This contribution shall be made in the form of a deduction from salary to be transmitted to the board in accordance with section [59-1325](#), Idaho Code.

(2) Any person who was prevented from being an active member during his first twelve (12) months of employment due to the restriction contained in subsection (2) of section [59-1302](#), Idaho Code, may, prior to December 31, 1975, pay the board the contributions he would have made absent said restriction and be credited with membership service for such period of time. The time for payment shall be extended provided such payment includes regular interest from December 31, 1975.

(3) Employee contributions received by the board in error may be refunded upon a distributable event with regular interest.

[(59-1331) 59-1303, added 1963, ch. 349, Art. 2, sec. 1, p. 988; am. 1969, ch. 283, sec. 2, p. 856; am. 1969, ch. 460, sec. 2, p. 1288; am. 1971, ch. 49, sec. 2, p. 105; am. 1974, ch. 57, sec. 3, p. 1118; am. 1979, ch. 158, sec. 2, p. 483; am. 1981, ch. 10, sec. 2, p. 17; am. 1984, ch. 130, sec. 1, p. 304; am. and redesisg. 1990, ch. 231, sec. 24, p. 630; am. 2001, ch. 138, sec. 1, p. 498.]

59-1332. PICK UP OF EMPLOYEE CONTRIBUTIONS. (1) An employer, pursuant to the provisions of section 414(h) (2) of the Internal Revenue Code of 1954, as amended, shall pick up and pay the contributions which would be payable by the employees as members under sections [59-1331](#) and [72-1431](#), Idaho Code, with respect to the service of employees after June 30, 1983.

(2) The members' contributions picked up by an employer shall be designated for all purposes of the retirement system as member contributions, except for the determination of tax upon a distribution from the retirement system. These accumulated contributions shall become part of the members' accumulated contributions, but accounted for separately from those previously accumulated.

(3) Member contributions picked up by an employer shall be payable from the same source as is used to pay compensation to a member, and shall be included in the member's salary as defined in subsection (31) of section [59-1302](#), Idaho Code.

[(59-1332) 1983, ch. 163, sec. 1, p. 469; am. 1986, ch. 147, sec. 2, p. 414; am. and redsig. 1990, ch. 231, sec. 25, p. 630.]

59-1333. CONTRIBUTIONS FROM EMPLOYEES. The contribution for a member who is not classified as a police officer or firefighter shall be sixty percent (60%) of the employer contribution rate determined pursuant to section [59-1322](#), Idaho Code, and rounded to the nearest one hundredth percent (.01%) of salary; provided, however, that such member rate effective October 1, 1985, shall remain at five and thirty-four hundredths percent (5.34%) of salary until the first time after October 1, 1985, that the employer rate is changed from eight and eighty-nine hundredths percent (8.89%) of salary. The board is specifically authorized to certify to the state controller the necessary adjustments in the rate of member contributions.

[(59-1333) 1963, ch. 349, Art. 2, sec. 2, p. 988; am. 1974, ch. 57, sec. 4, p. 1118; am. 1977, ch. 178, sec. 6, p. 462; am. 1980, ch. 143, sec. 2, p. 308; am. 1982, ch. 243, sec. 1, p. 629; am. 1986, ch. 143, sec. 1, p. 400; am. and redsig. 1990, ch. 231, sec. 26, p. 630; am. 1994, ch. 180, sec. 141, p. 512.]

59-1334. CONTRIBUTIONS -- FROM POLICEMEN AND FIREFIGHTERS. The contribution for a member who is classified as a police officer or firefighter shall be seventy-two percent (72%) of the employer contribution rate determined pursuant to section [59-1322](#), Idaho Code, and rounded to the nearest one hundredth percent (.01%) of salary; provided, however, that such member rate effective October 1, 1985, shall remain at six and forty hundredths percent (6.40%) of salary until the first time after October 1, 1985, that the employer rate is changed from eight and eighty-nine hundredths percent (8.89%) of salary. The board is specifically authorized to certify to the state controller the necessary adjustments in the rate of member contributions.

[(59-1334) 1963, ch. 349, Art. 2, sec. 3, p. 988; am. 1974, ch. 57, sec. 5, p. 1118; am. 1977, ch. 178, sec. 7, p. 462; am. 1980, ch. 143, sec. 3, p. 308; am. 1982, ch. 243, sec. 2, p. 629; am. 1986, ch. 143, sec. 2, p. 400; am. and redesignated 1990, ch. 231, sec. 27, p. 631; am. 1994, ch. 180, sec. 142, p. 512.]

59-1341. CONDITIONS OF ELIGIBILITY FOR SERVICE RETIREMENT. A vested member is eligible for service retirement as indicated below, based upon his service retirement ratio. A member's service retirement ratio shall, at retirement, be equal to the ratio of (1) to (2) as follows:

(1) The number of years of credited service for which the member was classified as a police officer or firefighter:

(2) The member's total number of years of credited service.

For service retirement ratio:	Service retirement eligibility age is:
0.000 to 0.100	65
0.101 to 0.300	64
0.301 to 0.500	63
0.501 to 0.700	62
0.701 to 0.900	61
0.901 to 1.000	60

A person who was an active member on June 30, 1985 shall be deemed to have a service retirement ratio of 1.000 either if the member was a police officer or firefighter on that date and continuously thereafter to retirement or if at the time of retirement the majority of the member's credited service has been that of a police officer or firefighter.

[(59-1341) 1963, ch. 349, Art. 4, sec. 1, p. 988; am. 1965, ch. 165, sec. 1, p. 324; am. 1967, ch. 398, sec. 4, p. 1184; am. 1969, ch. 283, sec. 3, p. 856; am. 1971, ch. 49, sec. 5, p. 105; am. 1979, ch. 158, sec. 3, p. 484; am. 1985, ch. 168, sec. 1, p. 445; am. 1987, ch. 164, sec. 2, p. 323; am. and redesign. 1990, ch. 231, sec. 29, p. 632; am. 1990, ch. 249, sec. 2, p. 706; am. 1999, ch. 199, sec. 2, p. 525.]

59-1342. COMPUTATION OF SERVICE RETIREMENT ALLOWANCES -- MINIMUM BENEFITS. (1) The annual amount of accrued retirement allowance for each month of credited service for which a member was not classified as a police member or firefighter shall equal one and two-thirds percent (1 2/3%) of the member's average monthly salary. Effective October 1, 1992, the annual amount of accrued retirement allowance for all service for which a member was not classified as a police member or firefighter shall equal one and seventy-five hundredths percent (1.75%) of the member's average monthly salary; effective October 1, 1993, the annual amount of accrued retirement allowance shall equal one and eight hundred thirty-three thousandths percent (1.833%) of the member's average monthly salary; effective October 1, 1994, the annual amount of accrued retirement allowance shall equal one and nine hundred seventeen thousandths percent (1.917%); and effective June 30, 2000, the annual amount of accrued retirement allowance shall equal two percent (2%) of the member's average monthly salary. Entitlement to an annual amount of accrued retirement allowance shall not vest until the effective date of that annual amount of accrued retirement allowance. The retirement benefits shall be calculated on the amounts, terms and conditions in effect on the date of the final contribution by the member. The annual amount of initial service retirement allowance of such a member shall equal paragraph (a) or (b) of this subsection, whichever is greater:

(a) The member's accrued retirement allowance; or

(b) Five dollars (\$5.00) multiplied by the number of months of credited service and by the bridging factor, as provided in section [59-1355](#), Idaho Code, between July 1, 1974, and the first of the month following the member's final contribution.

(2) The annual amount of accrued retirement allowance for each month of credited service for which a member was classified as a police member or firefighter shall equal two percent (2%) of the member's average monthly

salary. Effective October 1, 1992, the annual amount of accrued retirement allowance for all service for which a member was classified as a police member or firefighter shall equal two and seventy-five thousandths percent (2.075%) of the member's average monthly salary; effective October 1, 1993, the annual amount of accrued retirement allowance shall equal two and fifteen hundredths percent (2.15%) of the member's average monthly salary; effective October 1, 1994, the annual amount of accrued retirement allowance shall equal two and two hundred twenty-five thousandths percent (2.225%); and effective June 30, 2000, the annual amount of accrued retirement allowance shall equal two and three-tenths percent (2.3%) of the member's average monthly salary. Entitlement to an annual amount of accrued retirement allowance shall not vest until the effective date of that annual amount of accrued retirement allowance. The retirement benefits shall be calculated on the amounts, terms and conditions in effect on the date of the final contribution by the member. The annual amount of initial service retirement allowance of such a member shall equal paragraph (a) or (b) of this subsection, whichever is greater:

- (a) The member's accrued retirement allowance; or
- (b) Six dollars (\$6.00) multiplied by the number of months of credited service and by the bridging factor, as provided in section [59-1355](#), Idaho Code, between July 1, 1974, and the first of the month following the member's final contribution.

(3) The provisions of this section shall be applicable to members and contingent annuitants of the retirement system and to members, annuitants and beneficiaries of the teachers and city systems. In any recomputation of an initial retirement allowance for a person not making a final contribution subsequent to 1974, the bridging factor referred to in subsections (1) and (2) of this section shall be 1.000. Any recomputed retirement allowance shall be payable only prospectively from July 1, 1974.

(4) Benefits payable to a person who became a member prior to July 1, 1974, or to the member's beneficiaries shall never be less than they would have received under this chapter as in effect on June 30, 1974; provided, however, that the member shall have accrued the amount of accumulated contributions required thereby prior to payment of an initial retirement allowance.

(5) (a) If the majority of a member's credited service is as an elected official or as an appointed official, including a member of the Idaho legislature who first took office after July 1, 2019, and that official was normally in the administrative offices of the employer less than twenty (20) hours per week during the term of office, or was normally not required to be present at any particular workstation for the employer twenty (20) hours per week or more during the term of office, that member's initial service retirement allowance shall be the sum of:

- (i) That amount computed under subsection (1) and/or (2) of this section for only those months of service as an elected or an appointed official that are in excess of the months of other credited service, without consideration of any other credited service; and
- (ii) That accrued service retirement allowance that is computed from an average monthly salary for salary received during the member's total months of credited service excluding those excess months referenced in subparagraph (i) of this paragraph.

(b) The initial service retirement allowance of members of the Idaho legislature who first took office on or before July 1, 2019, will be com-

puted under subsection (1) and/or (2) of this section, on the basis of their total months of credited service.

(6) In no case, however, will a member's initial service retirement benefit be equal to more than the member's accrued benefit as of May 1, 1990, or one hundred percent (100%) of the member's average compensation for the three (3) consecutive years of employment that produce the greatest aggregate compensation, whichever is greater. If the benefit is calculated to exceed one hundred percent (100%) of the member's average compensation, the member shall be eligible for and may choose either:

(a) An annual service retirement allowance equal to the member's average annual compensation for the three (3) consecutive years of employment that produced the greatest aggregate compensation; or

(b) A separation benefit.

(7) The annual amount of initial service retirement allowance of a member who is over age seventy (70) years on the effective date of the member's retirement shall be a percentage of the member's initial service retirement allowance. Such percentage shall be one hundred percent (100%) increased as determined by the board to compensate for each month that the member's retirement is deferred beyond age seventy (70) years.

(8) A member's accrued retirement allowance, as otherwise provided in subsections (1), (2), (3), (4) and (5) of this section, shall not be less than the minimum accrued retirement allowance provided in this subsection. The determination of the initial service retirement allowance provided in subsections (1) and (2) of this section, and the application of the provisions in subsections (6) and (7) of this section, will be made after the determination of the minimum accrued retirement allowance provided in this subsection.

This subsection shall apply to members who have at least two (2) separate periods of employment covered under this chapter where each separate period of employment would otherwise be eligible for a separation benefit described in section [59-1359](#), Idaho Code. For purposes of this subsection, if a separation of employment occurs that does not exceed sixty (60) consecutive calendar months, then the member's period of employment shall be considered a continuous period of employment. For purposes of this subsection, the date of last contribution is the date of final contribution for each period or periods of employment.

For each separate period of employment considered under this subsection, the member must not have received a separation benefit for that period or, if he has received such a separation benefit under section [59-1359](#), Idaho Code, he must have completed reinstatement of all previous credited service associated with all separation benefits for all periods of employment as permitted under section [59-1360](#), Idaho Code.

The minimum accrued retirement allowance shall be equal to the largest accrued retirement allowance calculated at each date of last contribution based upon the benefit and eligibility provisions in effect as of the date of the last contribution made during such separate period of employment. For purposes of determining the accrued retirement allowance for each date of last contribution:

(a) The member must have at least sixty (60) months of credited service at the date of last contribution;

(b) The member's months of credited service and average monthly salary are determined based solely on all periods of employment up to that date of last contribution, ignoring later periods of employment; and

(c) The accrued retirement allowance computed for each period is multiplied by the bridging factor as provided in section [59-1355](#)(3), Idaho Code, between the date of the last contribution made during that separate period of employment and the date of the member's final contribution made during the last period of employment prior to retirement.

[(59-1342) I.C., sec. 59-1319, as added by 1974, ch. 57, sec. 10, p. 1118; am. 1979, ch. 26, sec. 2, p. 41; am. 1985, ch. 168, sec. 2, p. 446; am. 1985, ch. 193, sec. 1, p. 492; am. and redesisg. 1990, ch. 231, sec. 30, p. 633; am. 1990, ch. 249, sec. 4, p. 708; am. 1990, ch. 258, sec. 1, p. 738; am. 1991, ch. 61, sec. 4, p. 146; am. 1992, ch. 220, sec. 6, p. 666; am. 1992, ch. 342, sec. 2, p. 1042; am. 1994, ch. 276, sec. 3, p. 861; am. 1997, ch. 110, sec. 1, p. 266; am. 2000, ch. 209, sec. 1, p. 533; am. 2009, ch. 237, sec. 1, p. 729; am. 2019, ch. 75, sec. 1, p. 174.]

59-1343. CONVERSION AND COMMUTATION OF CERTAIN PAYMENTS. Unless the retirement board establishes a different level by rule, benefit payments of less than twenty dollars (\$20.00) per month shall be commuted into an actuarially equivalent single sum.

[(59-1343) 1974, ch. 57, sec. 7, p. 1118; am. 1981, ch. 10, sec. 5, p. 18; am. and redesisg. 1990, ch. 231, sec. 31, p. 634; am. 1993, ch. 350, sec. 5, p. 1302; am. 2001, ch. 138, sec. 2, p. 499.]

59-1344. TIME FOR PAYMENT OF SERVICE RETIREMENT OR EARLY RETIREMENT. A service retirement allowance or early retirement allowance shall become payable to a member on the first of the month following his ceasing to be an employee while eligible for service retirement or early retirement and on the first of each month thereafter to and including the first of the month of the member's death.

[(59-1344) 1963, ch. 349, Art. 5, sec. 1, p. 988; am and redesisg. 1990, ch. 231, sec. 32, p. 634.]

59-1345. VESTED MEMBER ELIGIBLE FOR EARLY RETIREMENT. A vested member who is not eligible for either service retirement or disability retirement is eligible for early retirement if he is within ten (10) years of being eligible for service retirement. Additionally, a vested member is eligible for early retirement on termination of disability retirement as provided by section [59-1354](#)(2), Idaho Code.

[59-1345, added 1990, ch. 231, sec. 33, p. 634; am. 1994, ch. 209, sec. 2, p. 663; am. 1999, ch. 199, sec. 3, p. 525.]

59-1346. COMPUTATION OF EARLY RETIREMENT ALLOWANCES. (1) The annual amount of initial early retirement allowance of a member shall be a percentage of the member's accrued retirement allowance. Such percentage shall be one hundred percent (100%) if the sum of the number of years and months of credited service and the age in years and months is equal to or greater than the sum indicated in this subsection. Otherwise, such percentage shall be one hundred percent (100%) reduced by one-fourth of one percent (.25%) for each month up to sixty (60) months that the member's retirement precedes the date the member would be eligible to receive full accrued benefit without additional credited service, and further reduced by two-thirds of one percent

(.6667%) for each additional month. Effective October 1, 1992, the further reduction for each additional month shall equal six thousand forty-two ten-thousandths of one percent (.6042%) of the member's average monthly salary; effective October 1, 1993, the further reduction for each additional month shall equal five thousand four hundred seventeen ten-thousandths of one percent (.5417%) of the member's average monthly salary; and effective October 1, 1994, the further reduction for each additional month shall equal four thousand seven hundred ninety-two ten-thousandths of one percent (.4792%) of the member's average monthly salary. Entitlement to an annual amount of accrued retirement allowance shall not vest until the effective date of that annual amount of accrued retirement allowance. The retirement benefits shall be calculated on the amounts, terms and conditions in effect at the date of the final contribution by the member.

If a member's service retirement ratio as defined by section 59-1341 , Idaho Code, is:	Then the sum of the member's credited service and age must be equal to or greater than:
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0.000 to 0.050	90
0.051 to 0.150	89
0.151 to 0.250	88
0.251 to 0.350	87
0.351 to 0.450	86
0.451 to 0.550	85
0.551 to 0.650	84
0.651 to 0.750	83
0.751 to 0.850	82
0.851 to 0.950	81
0.951 to 1.000	80

(2) (a) If the majority of a member's credited service is as an elected official or as an appointed official, including a member of the Idaho legislature who first took office after July 1, 2019, and that official was normally in the administrative offices of the employer less than twenty (20) hours per week during the term of office, or was normally not required to be present at any particular workstation for the employer twenty (20) hours per week or more during the term of office, that member's accrued retirement allowance shall be the sum of:

- (i) That amount computed from an average monthly salary for salary received only for those months of service as an elected or as an appointed official that are in excess of the months of other credited service without consideration of any other credited service; and
- (ii) That accrued retirement allowance that is computed from an average monthly salary for salary received during the member's total months of credited service excluding those excess months referenced in subparagraph (i) of this paragraph.

(b) The initial retirement allowance of members of the Idaho legislature who first took office on or before July 1, 2019, will be computed under the provisions of this section, on the basis of their total months of credited service.

(3) In no case will a member's initial early retirement benefit be equal to more than the member's accrued benefit as of May 1, 1990, or one hundred

percent (100%) of the member's average compensation for the three (3) consecutive years of employment that produce the greatest aggregate compensation, whichever is greater. If the benefit is calculated to exceed one hundred percent (100%) of the member's average compensation, the member shall be eligible for and may choose either:

(a) An annual early retirement allowance equal to the member's average annual compensation for the three (3) consecutive years of employment that produced the greatest aggregate compensation; or

(b) A separation benefit.

(4) A member's accrued retirement allowance, as otherwise provided in subsections (1) and (2) of this section, shall not be less than the minimum accrued retirement allowance provided in this subsection. The determination of the initial early retirement allowance provided in subsections (1) and (2) of this section and the application of the provisions in subsection (3) of this section will be made after the determination of the minimum accrued retirement allowance provided in this subsection.

(a) The provisions of this subsection shall apply to members who have at least two (2) separate periods of employment covered under this chapter where each separate period of employment would otherwise be eligible for a separation benefit described in section [59-1359](#), Idaho Code. For purposes of this subsection, if a separation of employment occurs that does not exceed sixty (60) consecutive calendar months, then the member's period of employment shall be considered a continuous period of employment. For purposes of this subsection, the date of last contribution is the date of final contribution for each period of employment.

(b) For each separate period of employment considered under this subsection, the member must not have received a separation benefit for that period or, if he has received such a separation benefit under section [59-1359](#), Idaho Code, he must have completed reinstatement of all previous credited service associated with all separation benefits for all periods of employment as permitted under section [59-1360](#), Idaho Code.

(c) The minimum accrued retirement allowance shall be equal to the largest accrued retirement allowance calculated at each date of last contribution based upon the benefit and eligibility provisions in effect as of the date of the last contribution made during such separate period of employment. For purposes of determining the accrued retirement allowance for each date of last contribution:

(i) The member must have at least sixty (60) months of credited service at the date of last contribution;

(ii) The member's months of credited service and average monthly salary are determined based solely on all periods of employment up to that date of last contribution, ignoring later periods of employment; and

(iii) The accrued retirement allowance computed for each period is multiplied by the bridging factor as provided in section [59-1355](#)(3), Idaho Code, between the date of the last contribution made during the separate period of employment and the date of the member's final contribution made during the last period of employment prior to retirement.

sec. 2, p. 739; am. 1992, ch. 220, sec. 7, p. 667; am. 1992, ch. 342, sec. 3, p. 1044; am. 1993, ch. 350, sec. 6, p. 1302; am. 1994, ch. 276, sec. 4, p. 863; am. 2009, ch. 237, sec. 2, p. 732; am. 2018, ch. 177, sec. 1, p. 390; am. 2019, ch. 75, sec. 2, p. 176.]

59-1350. DEFERRAL OF EARLY RETIREMENT. Early retirement may be deferred by a member until the date he would have been eligible for service retirement had he remained an active member.

[59-1350, added 1990, ch. 231, sec. 38, p. 636; am. 1992, ch. 220, sec. 8, p. 668; am. 1999, ch. 199, sec. 4, p. 525.]

59-1351. CONVERSION OF SERVICE RETIREMENT OR EARLY RETIREMENT ALLOWANCES INTO OPTIONAL RETIREMENT ALLOWANCES -- FORM OF OPTIONAL RETIREMENT. (1) The service retirement allowance, or the early retirement allowance of a member who, at time of retirement, so elects shall be converted into an optional retirement allowance which is the actuarial equivalent of such other allowance. The optional retirement allowance may take one (1) of the forms listed below and shall be in lieu of all other benefits under this chapter except that the provisions of section [59-1361](#) (2), Idaho Code, shall be applicable:

(a) Option 1 provides a reduced retirement allowance payable during the lifetime of the retired member, and a continuation thereafter of such reduced retirement allowance during the lifetime of the member's named contingent annuitant.

(b) Option 2 provides a reduced retirement allowance payable during the lifetime of the retired member, and a continuation thereafter of one-half (1/2) of such reduced retirement allowance during the lifetime of the member's named contingent annuitant.

(c) Option 3, which is available only if the member retires before the date of the social security normal retirement age for that member, provides an increased retirement allowance until such date and a reduced retirement allowance thereafter, the difference between the two (2) amounts approximately equaling the governmental old-age benefit becoming payable at such date as estimated by the board.

(d) Option 4, which is available only if the member retires before the date of the social security normal retirement age for that member, provides either an adjusted option 1 (option 4A) or option 2 (option 4B) retirement allowance until such date and a reduced retirement allowance thereafter, the difference between the two (2) amounts approximately equaling the governmental old-age benefit becoming payable at such date as estimated by the board. The adjusted retirement allowance shall be paid to the retired member during the member's lifetime and the appropriate continuation amount of the adjusted allowance to the member's named contingent annuitant for life thereafter.

(2) Should the named contingent annuitant under option 1 or option 2 either predecease a member retiring on or after October 1, 1992, or waive all survivor benefits pursuant to a domestic retirement order approved under section [59-1320](#), Idaho Code, upon notification to the board, the member's benefit on the first day of the month following the death of the contingent annuitant or approval of the domestic retirement order, as applicable, will thereafter become an allowance calculated pursuant to section [59-1342](#) or [59-1346](#), Idaho Code, whichever was applicable on the date of retirement, in addition to any postretirement allowance adjustments which may have ac-

crued from that time. Should the named contingent annuitant under option 4 either predecease the member, or waive all survivor benefits pursuant to a domestic retirement order approved under section [59-1320](#), Idaho Code, upon notification to the board, the member's benefit on the first day of the month following the contingent annuitant's death or approval of the domestic retirement order, as applicable will thereafter become the option 3 allowance to which the member would have been entitled as of the date of the annuitant's death, or approval of the domestic retirement order, as applicable. The benefit changes under this subsection shall be available only to members whose last contribution was made after June 30, 1992.

(3) Option 1 or 2 may not be chosen if initial monthly payments would be less than that amount set forth in, or pursuant to, section [59-1343](#), Idaho Code.

(4) Application for any optional retirement allowance shall be in writing, duly executed and filed with the board. Such application shall contain all information required by the board, including such proofs of age as are deemed necessary by the board.

(5) A retirement option elected at the time of retirement as provided for in this section may not be changed except by written notice to the retirement board no later than five (5) business days after the receipt of the first retirement allowance.

(6) Not later than one (1) year after the marriage of a retired member, the member may elect option 1, 2 or 4 to become effective ninety (90) days after the date of such election, provided the member's spouse is named as a contingent annuitant, and either:

(a) The member was not married at the time of the member's retirement; or

(b) The member earlier elected option 1, 2, 4A or 4B, having named the member's spouse as contingent annuitant, and said spouse has died or has waived all survivor benefits as provided in subsection (2) of this section.

Should a member make an election under this subsection (6), upon notification to the board, the member's benefit on the first day of the month following the effective date of the election will thereafter become the optional retirement allowance elected, calculated as of the date of retirement pursuant to subsection (1) of this section, in addition to any postretirement allowance adjustments that may have accrued from that time.

[(59-1351) 1963, ch. 349, Art. 5, sec. 7, p. 988; am. 1967, ch. 398, sec. 6, p. 1184; am. 1969, ch. 283, sec. 6, p. 856; am. 1974, ch. 57, sec. 8, p. 1118; am. 1976, ch. 97, sec. 7, p. 411; am. 1981, ch. 10, sec. 6, p. 18; am. and redesign. 1990, ch. 231, sec. 39, p. 636; am. 1990, ch. 249, sec. 3, p. 707; am. 1991, ch. 61, sec. 5, p. 148; am. 1992, ch. 220, sec. 9, p. 668; am. 1992, ch. 342, sec. 4, p. 1045; am. 1994, ch. 209, sec. 4, p. 663; am. 1999, ch. 160, sec. 2, p. 439; am. 1999, ch. 199, sec. 5, p. 525; am. 2004, ch. 328, sec. 3, p. 983; am. 2009, ch. 144, sec. 1, p. 433.]

59-1352. ELIGIBILITY FOR DISABILITY RETIREMENT. (1) An active member with five (5) years of membership service is eligible for disability retirement.

(2) A police officer member, general member, or a paid firefighter hired on or after July 1, 1993, who is not eligible for service retirement is eligible for disability retirement if disabled, as provided in section

[59-1302](#)(12), Idaho Code, on or after the first day of employment as a result of bodily injury or disease from an occupational cause.

(3) Only active members, and inactive members whose date of last contribution as an active member was less than one (1) year prior to the date of application, are eligible to apply for disability retirement.

[59-1352, added 1990, ch. 231, sec. 40, p. 637; am. 1993, ch. 178, sec. 1, p. 458; am. 1993, ch. 251, sec. 1, p. 875; am. 2000, ch. 68, sec. 1, p. 152; am. 2001, ch. 138, sec. 3, p. 499; am. 2006, ch. 148, sec. 1, p. 462; am. 2007, ch. 44, sec. 2, p. 111; am. 2009, ch. 144, sec. 2, p. 435.]

59-1352A. PUBLIC SAFETY OFFICER PERMANENT DISABILITY BENEFIT. (1) A public safety officer who is ruled by the retirement system to be permanently disabled, as provided in sections [59-1302](#)(12) and [59-1352](#), Idaho Code, on or after July 1, 2009, as a result of bodily injury or disease sustained in the line of duty is eligible for a onetime permanent disability benefit in the amount of one hundred thousand dollars (\$100,000), which shall be payable as provided in this section to the permanently disabled public safety officer.

(2) Public safety officers who qualify and who seek the benefit under this section shall apply to the retirement board. No benefit shall be payable unless the retirement board determines that:

- (a) The permanent disability occurred in the line of duty;
- (b) The permanent disability was not caused by the intentional misconduct of the public safety officer or by the public safety officer's intentional infliction of injury; and
- (c) The public safety officer was not voluntarily intoxicated at the time of the event causing the permanent disability.

(3) As used in this section, "public safety officer" means an active member of the retirement system who, when injured:

- (a) Was designated as a police officer member under section [59-1303](#), Idaho Code;
- (b) Was a firefighter as defined in section [59-1302](#)(16), Idaho Code; or
- (c) Was a paid firefighter as defined in section [72-1403](#)(A), Idaho Code.

(4) The benefit payable under this section is as follows:

- (a) Separate from and independent of any benefits payable to the public safety officer under this chapter;
- (b) Not dependent upon years of service or age of the public safety officer; and
- (c) Shall not be subject to state income taxes.

(5) It is the intent of the legislature that this benefit shall be funded solely by public safety officers in perpetuity and not by an employer, as defined in section [59-1302](#)(15), Idaho Code. Therefore, the costs associated with providing this benefit, as determined by the board, shall be paid solely by the public safety officers.

[59-1352A, added 2009, ch. 158, sec. 1, p. 476; am. 2020, ch. 97, sec. 1, p. 256.]

59-1353. COMPUTATION OF DISABILITY RETIREMENT ALLOWANCES. (1) The base disability retirement allowance of any member shall be equal to an initial service retirement allowance, as defined in section [59-1342](#), Idaho Code, based upon the years of service which would have been credited to the member had the member continued in eligible employment until service retirement

eligibility age, as defined in section [59-1341](#), Idaho Code. Provided, however, that the total years of credited service shall not exceed the greater of:

- (a) Thirty (30) years; or
- (b) The member's accrued membership and prior service.
- (2) The annual amount of disability retirement allowance shall equal the excess, if any, of (a) over (b), where:
 - (a) Is the base disability retirement allowance provided in subsection (1) of this section; and
 - (b) Is the sum of:
 - (i) Any payment or portion of a payment under the provisions of any workers' compensation law for income benefits because of the same disability, which payment is not being offset by federal social security disability benefits; and
 - (ii) The service retirement allowance payable under the provisions of section [59-1342](#), Idaho Code, where the member is the older of either age sixty-two (62) or the respective service retirement eligibility age provided in section [59-1341](#), Idaho Code.
- (3) If a single payment is made under the provisions of any workers' compensation law and such single payment is in lieu of periodic income payments, for the purposes of this section such single payment shall be converted, pursuant to regulations adopted by the board, to equal periodic payments of the same number of months for which the worker's compensation payment is awarded.
- (4) Each adjustment in the payment of a disability retirement allowance due to a change in the amount payable under the provisions of any workers' compensation law shall take effect on the first of the month following the month in which such change is effective.

[(59-1353) 1963, ch. 349, Art. 6, sec. 2, p. 988; am. 1974, ch. 57, sec. 12, p. 1118; am. and redesig. 1990, ch. 231, sec. 41, p. 637; am. 1991, ch. 61, sec. 6, p. 149; am. 1993, ch. 251, sec. 2, p. 876.]

59-1354. TIME FOR PAYMENT OF DISABILITY RETIREMENT ALLOWANCE. (1) A disability retirement allowance shall become payable to a member on the first of the month next following the later of:

- (a) The day salary, sick leave or other temporary compensation benefits terminate under any plan paid for in whole or in part by the employer of the member; or
- (b) The day five (5) months after the member becomes eligible for disability retirement.
- (2) The disability retirement allowance shall be paid monthly thereafter to, but not including, the first of the month next following the earliest of the date:
 - (a) Of the retired member's death;
 - (b) That the retired member elects to receive an early or service retirement allowance;
 - (c) That the retired member ceases to be disabled, provided however, that a retired member, who subsequent to becoming a disability retiree serves on any state board or commission that is statutorily required to meet once per month or less and, who is not an employee as defined in this chapter by virtue of such service, shall not be deemed to have ceased to be disabled because of such service; or

(d) That the member waives, in writing, the member's disability allowance.

(3) When a disability retirement allowance ceases pursuant to subsection (2) (b) of this section, the early or service retirement allowance shall become payable on the first of the month following the date of the last payment of the disability retirement allowance.

(4) Effective the date a disability retirement allowance ceases pursuant to subsections (2) (c) and (d) of this section, the member's status shall be inactive unless the member again becomes an employee or elects either early or service retirement.

[(59-1354) 1963, ch. 349, Art. 5, sec. 3, p. 988; am. 1969, ch. 283, sec. 4, p. 586; am. 1976, ch. 97, sec. 5, p. 410; am. 1981, ch. 10, sec. 4, p. 18; am. and redesign. 1990, ch. 231, sec. 42, p. 638; am. 1993, ch. 251, sec. 3, p. 876; am. 2012, ch. 115, sec. 1, p. 317.]

59-1354A. MEMBERS RECEIVING A DISABILITY RETIREMENT RETURNING TO WORK. (1) A retired member receiving a disability retirement allowance may return to work under the following conditions:

(a) The retired member must notify the executive director in writing in advance of the return to work; and

(b) The disability retirement allowance shall terminate upon such notification.

(2) The disability retirement allowance of a retired member who returns to work under subsection (1) of this section shall resume if:

(a) The retired member terminates his return to work within one hundred fifty (150) days from the date of the notification required in subsection (1) (a) of this section;

(b) The retired member makes a written request to the board; and

(c) The board determines that the member is disabled, as defined in section [59-1302](#) (12), Idaho Code, and that the member could not successfully return to work because of the same disability on which his disability retirement was based.

(3) In making its decision, the board may require the member to submit medical records in support of his request and may require the member to submit to a medical examination. The refusal to submit such records or to submit to such examination shall constitute proof that the member is not disabled. If the board requires a medical examination, any costs associated with such examination must be paid by the member. A disability retirement allowance that is resumed under this section shall be payable the first of the month after the board makes the determination described herein.

(4) If a retired member receiving a disability retirement allowance who returns to work again meets the definition of employee as defined in section [59-1302](#) (14) (A), Idaho Code, eligibility for disability retirement shall be determined in accordance with sections [59-1302](#) (12), [59-1352](#) and [59-1354](#), Idaho Code.

(5) For the purposes of this section, "return to work" means being engaged in any activity for which compensation is normally paid but shall not include service on any state board or commission that is statutorily required to meet once per month or less where the retired member is not an employee as defined in this chapter by virtue of such service.

[59-1354A, added 2010, ch. 101, sec. 1, p. 197; am. 2012, ch. 115, sec. 2, p. 318.]

59-1355. POSTRETIREMENT ALLOWANCE ADJUSTMENTS. (1) Each retirement allowance payment shall, subject to the provisions of this section, equal the inflation factor for the adjustment year of payment multiplied by the amount of the retirement allowance payment for March of the previous year. During any adjustment year for which the ratio of the consumer price index for the index month of the previous year to the consumer price index for the index month of the second previous year is not more than one hundred one percent (101%), the inflation factor shall be such ratio or ninety-four percent (94%), whichever is greater, which inflation factor shall not be subject to legislative approval. Otherwise the inflation factor during such adjustment year shall be one hundred one percent (101%), except that the board, with legislative approval, may put into effect a greater factor which is no more than such ratio or one hundred six percent (106%), whichever is smaller, if it finds the value of the actuarial assets of the system to be no less than its actuarial liabilities, including those created by the increased factor. The actuarial assets comprise the sum of the actuarial present value of the amortization payments determined in accordance with the requirements of section [59-1322](#)(5), Idaho Code, plus the amounts determined in paragraphs (e)(ii), (e)(iii), (e)(iv), (e)(v) and (g) of section [59-1322](#)(4), Idaho Code. The actuarial liabilities are as defined in paragraph (e)(i) of section [59-1322](#)(4), Idaho Code. The board's proposed inflation factor for any adjustment year shall be communicated by letter to the legislature by not later than January 15 prior to that year.

(2) During an adjustment year following one in which there was at least one (1) retirement allowance payment but none in March, each retirement allowance payment shall equal the partial factor multiplied by the amount of the monthly retirement allowance payment in the earlier year. The partial factor shall equal 1.000 plus one-twelfth (1/12) of the product of the number of months in the earlier adjustment year in which member contributions were not made and the excess, if any, of the inflation factor for the later year over 1.000.

(3) During an adjustment year following one in which there was no retirement allowance payment, each retirement allowance payment shall equal the initial retirement allowance multiplied by the bridging factor between the first day of the month following the member's final contribution and the date of the first retirement allowance payment.

(a) Except as provided in paragraph (b) of this subsection, the bridging factor between any two (2) dates shall be the ratio of the amounts of retirement allowance payable on the two (2) dates for any member who retired on the earlier date immediately following his final contribution.

(b) For any member not making a final contribution subsequent to 1974 whose initial retirement allowance is a minimum allowance provided in section [59-1342](#)(1)(b) or [59-1342](#)(2)(b), Idaho Code, the bridging factor shall be computed as if the member had made his final contribution in 1974.

(4) The consumer price index shall be that for all urban consumers published by the bureau of labor statistics, United States department of labor.

(5) The adjustments provided under this section shall in no event reduce a benefit payment below its initial amount.

(6) An adjustment year shall extend from March through the following February. The index month is October for adjustment years commencing before March, 1990, and is August for subsequent adjustment years.

(7) If, by the forty-fifth day of any regular legislative session, the legislature has not adopted a concurrent resolution rejecting or amending the proposed adjustments of the board allowed in subsections (1) and (8) of this section, such action on the part of the legislature shall constitute legislative approval of the board's adjustments.

(8) Notwithstanding other provisions of this section, the board may grant a postretirement allowance adjustment for any previous year or years up to the full amount of the increase in the consumer price index for that year or those years, as provided in subsection (7) of this section.

[(59-1355) 1979, ch. 26, sec. 3, p. 42; am. 1984, ch. 132, sec. 3, p. 314; am. 1986, ch. 122, sec. 1, p. 322; am. 1989, ch. 184, sec. 1, p. 459; am. and redesign. 1990, ch. 231, sec. 43, p. 638; am. 1990, ch. 249, sec. 5, p. 709; am. 1996, ch. 79, sec. 4, p. 258; am. 2009, ch. 144, sec. 3, p. 435.]

59-1356. REEMPLOYMENT OF RETIRED MEMBERS. (1) If an early retired member is reemployed with the same employer within ninety (90) days from retiring, or the early retired member is guaranteed reemployment with the same employer, the member shall be considered to have continued in the status of an employee and not to have separated from service. Any retirement allowance payments received by the retired member shall be repaid to the system and the retirement shall be negated. The month of last contribution prior to the negated retirement and the month of initial contribution upon return to reemployment shall be considered consecutive months of contributions in the determination of an appropriate salary base period upon subsequent retirement. A retired member is not considered to have separated from service if he continues performing services for the same employer in any capacity including, but not limited to, independent contractor, leased employee, or temporary services.

(2) Except as provided in subsection (3) of this section, when a retired member meets the definition of an employee as defined in section [59-1302](#) (14) (A) (a), Idaho Code, any benefit payable on behalf of such member shall be suspended and any contributions payable by such member under sections [59-1331](#) through [59-1334](#), Idaho Code, shall again commence. The suspended benefit, as adjusted pursuant to section [59-1355](#), Idaho Code, shall resume upon subsequent retirement, along with a separate allowance computed with respect to only that salary and service credited during the period of reemployment. Any death benefit that becomes payable under the suspended benefit shall be payable under section [59-1361](#) (2), Idaho Code. Any death benefit that becomes payable with respect to salary and service accrued during the period of reemployment shall be payable under section [59-1361](#) (3), Idaho Code, if the member dies during the period of reemployment.

(3) If a retired member who is receiving a benefit that is not reduced under section [59-1346](#), Idaho Code, and who has been retired for more than six (6) months, again becomes employed as defined in this section and section [59-1302](#) (14) (A) (b), Idaho Code, as a result of being elected to a public office other than an office held prior to retirement, the retired member may elect to continue receiving benefits and not accrue additional service, in which event no contributions shall be made by the member or employer during such reemployment and any benefit payable on behalf of such member shall continue.

(4) If a retired schoolteacher or administrator who retired on or after age sixty (60) years, or a public safety officer who retired, and is receiving a benefit that is not reduced under section [59-1346](#), Idaho Code, again becomes an employee as defined in this section and section [59-1302](#)(14), Idaho Code, as a result of returning to employment with a school district as provided in section [33-1004H](#), Idaho Code, the retired member may elect to continue receiving benefits and not accrue additional service, in which event no contributions shall be made by the member during such reemployment and any benefit payable on behalf of such member shall continue. However, the school district shall pay the required employer contribution for that employee to the public employee retirement system.

(5) It is the responsibility of each employer to immediately report to the retirement board the employment of any retired member so that benefit payments can be suspended as provided in this section. If an employer fails to properly report the employment of a retired member and it results in the retirement board making benefit payments that should have been suspended, the employer shall, in addition to paying delinquent employee and employer contributions from the date of eligibility, also be responsible for repaying to the retirement board the benefit payments made to the retired member that should have been suspended, plus interest. The employer may then recoup such payments from the retired member.

(6) For purposes of this section, "same employer" means the employer for which the retired member last worked prior to retirement.

[(59-1356) 59-1318, added 1963, ch. 349, Art. 5, sec. 8, p. 988; am. 1969, ch. 283, sec. 7, p. 856; am. 1974, ch. 57, sec. 9, p. 1118; am. 1981, ch. 10, sec. 7, p. 19; am. and redesign. 1990, ch. 231, sec. 44, p. 639; am. 1996, ch. 243, sec. 1, p. 773; am. 1999, ch. 198, sec. 5, p. 518; am. 2006, ch. 151, sec. 1, p. 466; am. 2006, ch. 185, sec. 1, p. 585; am. 2007, ch. 44, sec. 3, p. 111; am. 2007, ch. 45, sec. 1, p. 114; am. 2007, ch. 131, sec. 2, p. 388; am. 2008, ch. 27, sec. 16, p. 54; am. 2012, ch. 169, sec. 2, p. 449; am. 2017, ch. 80, sec. 1, p. 223; am. 2019, ch. 202, sec. 1, p. 620.]

59-1358. COMPUTATION OF SEPARATION BENEFITS. The separation benefit shall equal the excess, if any, of the member's accumulated contributions at the time the benefit becomes payable over the aggregate of all retirement allowance payments ever made to the member.

[(59-1358) 1963, ch. 349, Art. 6, sec. 5, p. 988; am. and redesign. 1990, ch. 231, sec. 46, p. 640.]

59-1359. SEPARATION BENEFITS. (a) The separation benefit, if any, shall become payable upon the written request of an inactive member who has been separated from employment. If the person who received a separation benefit is reemployed or reinstated by the same employer within ninety (90) days or is guaranteed a right to employment or reinstatement with the same employer, the person shall repay to the system any separation benefit paid.

(b) A separation benefit shall automatically be payable three (3) years after a person becomes an inactive member if the inactive member is not a vested member, has accumulated contributions of less than one thousand dollars (\$1,000), and has been separated from employment and is not reemployed or reinstated by the same employer within ninety (90) days.

(c) For purposes of this section, "separated from employment" means the inactive member terminated all employment with the employer. An inactive member is not considered to have separated from employment if he continues performing services for the same employer in any capacity including, but not limited to, independent contractor, leased employee, or temporary services. For purposes of this section, "same employer" means the employer for which the person last worked prior to being separated from employment.

(d) Any member may elect to have eligible rollover distributions paid directly to a specified eligible retirement plan as required by 26 U.S.C. section 401(a) (31).

[(59-1359) 1963, ch. 349, Art. 5, sec. 4, p. 988; am. 1965, ch. 165, sec. 2, p. 324; am. 1971, ch. 49, sec. 6, p. 105; am. 1987, ch. 164, sec. 3, p. 324; am. and redesign. 1990, ch. 231, sec. 47, p. 640; am. 1993, ch. 350, sec. 7, p. 1304; am. 1996, ch. 243, sec. 3, p. 774; am. 1998, ch. 193, sec. 2, p. 697; am. 1999, ch. 199, sec. 6, p. 527; am. 2006, ch. 152, sec. 1, p. 467; am. 2007, ch. 44, sec. 4, p. 112.]

59-1360. CESSATION OF MEMBERSHIP -- REINSTATEMENT. A person shall cease to be a member when the person's accumulated contributions are paid to the person. After again becoming an employee the member may reinstate previous credited service by repaying to the retirement fund the full amount of all prior accumulated contributions provided such repayment includes payment of interest as determined by the board.

[(59-1360) 1963, ch. 349, Art. 3, sec. 2, p. 988; am. 1971, ch. 49, sec. 4, p. 105; am. 1976, ch. 97, sec. 2, p. 409; am. 1984, ch. 129, sec. 1, p. 304; am. and redesign. 1990, ch. 231, sec. 48, p. 640; am. 1991, ch. 17, sec. 1, p. 37; am. 1993, ch. 350, sec. 8, p. 1304.]

59-1361. COMPUTATION OF DEATH BENEFITS -- METHOD OF PAYMENT -- OPTIONAL DEATH BENEFIT. (1) The death benefit of an active or inactive member not vested at time of death shall equal the excess, if any, of the member's accumulated contributions at the time the benefit becomes payable over the aggregate of all benefit payments ever made to the member.

(2) The death benefit of an early or service retired member shall equal the excess, if any, of the member's accumulated contributions at the time the member retired over the aggregate of all retirement allowance payments ever made to the member, the member's named contingent annuitant, and the optional death benefit recipient, if any.

(3) The death benefit of a vested member who, at the time of death is either active, inactive, or a disability retiree, shall equal the excess, if any, of two hundred percent (200%) of the member's accumulated contributions at the time of death over the aggregate of all benefit payments ever made to the member and the optional death benefit recipient, if any.

(4) The death benefit, if any, will be paid to the member's designated beneficiary who is surviving the member at the time the benefit becomes payable. If no beneficiary has been designated or the designated beneficiary has predeceased the member, the death benefit will be paid to the surviving spouse, and if there is no surviving spouse it will be paid in accordance with the laws of descent and distribution of the state of Idaho as they may then be in effect. The designated beneficiary may waive, in writing as required by the board, any death benefit otherwise payable. If

the designated beneficiary waives the death benefit, it will be paid as if the designated beneficiary predeceased the member.

(5) When the surviving spouse of a vested member is entitled to a death benefit under subsection (3) of this section, the surviving spouse may elect either an allowance as provided in option 1 under section [59-1351](#), Idaho Code, or a one (1) time lump sum death benefit payment as provided in subsection (3) of this section. The initial retirement allowance upon which such optional retirement allowance is based shall be calculated as if the member had retired immediately before his death. If the member is not then eligible to receive a service or early retirement allowance, such initial retirement allowance shall equal the actuarial equivalent of the retirement allowance payable when the member would first be eligible for service or early retirement, calculated as if he had separated from service immediately before his death.

[(59-1361) 1963, ch. 349, Art. 6, sec. 2, p. 988; am. 1974, ch. 57, sec. 15, p. 1118; am. 1976, ch. 97, sec. 9, p. 413; am. 1984, ch. 132, sec. 5, p. 316; am. 1986, ch. 147, sec. 4, p. 414; 1990, am. and redesignated, ch. 231, sec. 49, p. 641; am. 1990, ch. 249, sec. 6, p. 711; am. 1992, ch. 220, sec. 10, p. 669; am. 1997, ch. 348, sec. 1, p. 1034; am. 1999, ch. 160, sec. 1, p. 438; am. 1999 ch. 199, sec. 7, p. 527; am. 2004, ch. 211, sec. 1, p. 637.]

59-1361A. PUBLIC SAFETY OFFICER DEATH BENEFITS. (1) On and after July 1, 2003, in the event a public safety officer dies as the direct and proximate result of a personal injury sustained in the line of duty, a death benefit in the amount of one hundred thousand dollars (\$100,000) shall be payable as provided in this section to the officer's surviving spouse or, in the event there is no surviving spouse, divided among the officer's dependent children.

(2) Application for benefits under this chapter shall be made to the retirement board. No benefit shall be payable unless it is established, as determined by the retirement board, that:

(a) The officer's death occurred in the line of duty as defined in regulations issued by the United States department of justice pursuant to 42 U.S.C. section 3796, except as modified by the retirement board;

(b) The death was not caused by the intentional misconduct of the officer or by such officer's intentional infliction of injury;

(c) The officer was not voluntarily intoxicated at the time of death; and

(d) Benefit payments will not be paid to a person whose actions were a substantial contributing factor to the death of the officer.

(3) As used in this section:

(a) "Dependent child" means a surviving natural or legally adopted child who is under twenty-one (21) years of age at the time of the officer's death. Benefits to dependent children shall be paid in accordance with the provisions of the Idaho uniform transfers to minors act, as set forth in [chapter 8, title 68](#), Idaho Code; provided that when there are multiple dependent children, the benefit shall be divided equally among them.

(b) "Public safety officer" means an active member of the retirement system who when injured:

(i) Was designated as a police officer member under section [59-1303](#), Idaho Code, and had been treated as such for contribution purposes;

(ii) Was a "firefighter" as defined in section [59-1302](#)(16), Idaho Code; or

(iii) Was a "paid firefighter" as defined in section [72-1403](#)(A), Idaho Code.

(4) Benefits payable under this section:

(a) Are separate from and independent of any benefits payable under section [59-1361](#), Idaho Code;

(b) Are not dependent on years of service or age of the public safety officer; and

(c) Shall not be subject to state income taxes.

(5) The costs of providing this benefit, as determined by the board, shall be paid by the employers of public safety officers as an additional contribution component separate and distinct from all other obligations under this chapter. Such costs will be paid in a manner as determined by the board.

[59-1361A, added 2003, ch. 238, sec. 1, p. 614.]

59-1362. PURCHASE OF ACTIVE DUTY SERVICE IN THE ARMED FORCES. (1) If a member is entitled to reemployment rights related to the member's active duty service under the uniformed services employment and reemployment rights act of 1994 (USERRA), as amended, any period of that active duty service that is not eligible to be credited as military service under section [59-1302](#)(23), Idaho Code, may be credited as membership service if the member pays employee contributions for that period as required in this section.

(2) The member must pay employee contributions or enter into an agreement to do so and begin making payments within ninety (90) days from the date of reemployment. If the member pays employee contributions or enters into an agreement to do so, the employer will be responsible for paying employer contributions for the same period within thirty (30) days thereafter. Both employee and employer contributions will be based upon compensation the member would have received but for the period of active duty service.

(3) The member may have up to five (5) years to repay employee contributions, with interest accruing only from the date of return from active duty service. If the member terminates employment prior to repaying all the employee contributions related to the eligible period as agreed, membership service will be granted only for the period for which contributions were paid.

(4) All periods of active duty service that do not qualify as "military service" under section [59-1302](#)(23), Idaho Code, or for purchase of membership service under this section, must be purchased under section [59-1363](#), Idaho Code.

[59-1362, added 2000, ch. 281, sec. 1, p. 904; am. 2002, ch. 9, sec. 1, p. 12; am. 2007, ch. 44, sec. 5, p. 112.]

59-1363. PURCHASE OF MEMBERSHIP SERVICE. (1) Notwithstanding any other provision of this chapter, an active or inactive member who is vested may purchase up to forty-eight (48) months of membership service.

(2) The cost of purchases under this section shall be the full actuarial costs of the service as determined by the board. The board may provide

for payment options, including periodic payments, but no service shall be credited until payment has been made in full. The member shall be solely responsible for the costs of such purchased service, except that an employer may participate in the costs at its option.

(3) In no event shall any member be allowed to purchase in the aggregate more than forty-eight (48) months of membership service under this section.

[59-1363, added 2000, ch. 440, sec. 1, p. 1401; am. 2002, ch. 9, sec. 2, p. 12; am. 2007, ch. 44, sec. 6, p. 113.]

59-1365. VOLUNTARY UNUSED SICK LEAVE POOL. The board is authorized to establish and administer an unused sick leave pool for the voluntary participation of employer units not eligible to participate in other statutorily created sick leave arrangements. The pool shall be funded entirely by the contributions of participating employer units and the board may charge reasonable administrative expenses for administration. The requirements, rates and parameters for participation in the pool will be set forth by rules of the board.

[59-1365, added 2000, ch. 30, sec. 1, p. 56.]

59-1371. DEFINITIONS. As used in this chapter, each of the terms defined shall have the meaning given in this section or in section [59-1302](#), Idaho Code, unless a different meaning is clearly required by the context.

(a) "Accumulated teacher member contributions" means the sum of all amounts deducted from the compensation of a teacher member on or before July 1, 1965 and credited to his individual account in the savings annuity savings fund, together with interest credited to said account to such date.

(b) "Board" means the retirement board of the employee system.

(c) "Date of establishment" means July 1, 1967 for school employees.

(d) "Funding agent" means the funding agent of the employee system.

(e) "Prior service" means any period, prior to July 1, 1965, of military service or of employment for the state of Idaho or any political subdivision or other employer as defined by this chapter of each school employee who is an active member or in military service or on leave of absence on the date of establishment.

(f) "Employee system" means the retirement system created by and existing through the provisions of [chapter 13, title 59](#), Idaho Code.

(g) "School employee" means any employee of any school district or any public community college district or Boise State University including each member of the teachers system, subject to the provisions of section [59-1302](#) (14), Idaho Code, but shall not include any person who is an annuitant of the teachers system.

(h) "Teacher member" means a member of the teachers system on July 1, 1967, subject to the provisions of section [59-1302](#) (14), Idaho Code.

(i) "Teachers system" means the retirement system created by and existing through [chapter 13, title 33](#), Idaho Code.

[(59-1360) 1967, ch. 115, sec. 1, p. 222; am. and redesign. 1990, ch. 231, sec. 50, p. 641.]

59-1372. TRANSFER OF ALL ASSETS, LIABILITIES, DUTIES, OBLIGATIONS AND RIGHTS TO EMPLOYEE SYSTEM. All of the funds, assets, liabilities, duties, obligations and rights of the board of trustees and members of the teachers

system shall be transferred to and integrated with the employee system on July 1, 1967. The board of trustees of the teachers system is by this chapter abolished. Benefits payable to annuitants and beneficiaries of the teachers system shall become the obligation of the employee system on July 1, 1967 and shall be paid in the same amount as established by the teachers system. The funds of the teachers system are by this chapter abolished. Cash on hand in said funds shall be deposited by the state treasurer in the clearing account of the employee system. Evidence of indebtedness arising from invested money of said funds shall be transferred by the custodians thereof to the funding agent. The money and property of said funds shall become the money and property of the employee system.

[(59-1372) 1967, ch. 115, sec. 2, p. 222; am. and redesign. 1990, ch. 231, sec. 51, p. 642.]

59-1373. ACCUMULATED TEACHER MEMBER CONTRIBUTIONS -- REMAINING CONTRIBUTIONS -- MEMBERSHIP SERVICE CREDIT. Accumulated teacher member contributions, unless previously withdrawn, shall be paid to teacher members prior to January 1, 1968, by the board from the clearing account of the employee system. All remaining contributions shall be considered as accumulated contributions as defined in section [59-1302](#)(3), Idaho Code. Each month of service of any teacher member between July 1, 1965 and July 1, 1967 during which the teacher member was a member of the teachers system shall be deemed to be membership service.

[(59-1373) 1967, ch. 115, sec. 4, p. 222; am. 1976, ch. 97, sec. 11, p. 414; am. and redesign. 1990, ch. 231, sec. 52, p. 642.]

59-1374. EMPLOYERS -- MEMBERS -- EXCEPTIONS. All school districts, public community college districts and Boise State University shall become employers pursuant to the provisions of [chapter 13, title 59](#), Idaho Code, on July 1, 1967, except as herein otherwise provided. School employees shall become members pursuant to the provisions of [chapter 13, title 59](#), Idaho Code, on July 1, 1967, except as herein otherwise provided. Provided, however, that teacher members employed by the agricultural extension service of the college of agriculture of the University of Idaho shall be deemed to be employees of the state of Idaho notwithstanding the provisions of section [59-1302](#)(14)(B)(e), Idaho Code, and may elect to participate or be excluded as members of the system in accordance with rules of the board. All public charter schools created pursuant to [chapter 52, title 33](#), Idaho Code, shall be employers pursuant to the provisions of [chapter 13, title 59](#), Idaho Code. The Idaho digital learning academy created pursuant to [chapter 55, title 33](#), Idaho Code, shall be an employer pursuant to the provisions of this [chapter 13, title 59](#), Idaho Code. The Idaho bureau of educational services for the deaf and the blind created pursuant to [chapter 34, title 33](#), Idaho Code, shall be an employer pursuant to the provisions of this [chapter 13, title 59](#), Idaho Code.

[(59-1374) 1967, ch. 115, sec. 5, p. 222; am and redesign. 1990, ch. 231, sec. 53, p. 642; am. 1992, ch. 220, sec. 11, p. 670; am. 1998, ch. 201, sec. 3, p. 719; am. 2008, ch. 119, sec. 9, p. 339; am. 2011, ch. 43, sec. 2, p. 99.]

59-1375. ANNUITANTS -- CONTRIBUTION IN LIEU OF THE REQUIREMENT OF SIX MONTHS OF MEMBERSHIP SERVICE. A person who became an annuitant of the teachers system on or after March 29, 1965, and who had met the requirements for service or disability retirement on the date such person became an annuitant, except for the requirement of six (6) months of membership service, shall be eligible for service or disability retirement on January 1, 1968 by contributing to the employee system pursuant to rules of the board an amount equal to the sum such person would have contributed during six (6) months of membership service computed on the basis of the salary such person received on the date such person became an annuitant. This contribution shall be in lieu of the requirement of six (6) months of membership service. The amount so contributed shall not be included in the computation of disability or service retirement allowance.

[(59-1375) 1967, ch. 115, sec. 8, p. 222; am. and redesign. 1990, ch. 231, sec. 54, p. 643.]

59-1376. BENEFITS TO TEACHER MEMBERS NOT TO BE LESS THAN THOSE PAID IF SYSTEM HAD NOT BEEN INTEGRATED. Benefits paid teacher members who became eligible for benefits under the employee system shall never be less than the benefits such teacher members would have received as annuitants or that their beneficiaries would have received from the teachers system if the systems had not been integrated.

[(59-1376) 1967, ch. 115, sec. 10, p. 222; am and redesign. 1990, ch. 231, sec. 55, p. 643.]

59-1381. MERGER OF CITY SYSTEMS INTO STATE EMPLOYEE SYSTEM -- DEFINITIONS. As used in this chapter, each of the terms defined shall have the meaning given in this section or in section [59-1302](#), Idaho Code, unless a different meaning is clearly required by the context.

(a) "Board" means the retirement board of the employee system.

(b) "City member" means a person receiving benefits or establishing the right to receive benefits from a city system.

(c) "City system" means the Boise city employee's retirement system and any policeman's retirement system established and operated by virtue of any city ordinance, charter, or pursuant to the provisions of [chapter 15, title 50](#), Idaho Code.

(d) "Employee system" means the retirement system created by and existing through the provisions of [chapter 13, title 59](#), Idaho Code.

(e) "Employer" means a city having a city system.

[(59-1381) 1971, ch. 26, sec. 1, p. 68; am. and redesign. 1990, ch. 231, sec. 56, p. 643.]

59-1382. CITY ORDINANCE ELECTING MERGER -- CONTRACT WITH BOARD. Any city having a city system may elect to merge its city system with the employee system by the enactment of an ordinance declaring such intention; the provisions of section [50-1503](#), Idaho Code, and section [50-1524](#), Idaho Code, notwithstanding. Thereupon the board of the employee system may upon such terms as are set forth in a contract between the board and employer integrate the city system of the employer into the employee system.

[(59-1382) 1971, ch. 26, sec. 2, p. 68; am and redesisg. 1990, ch. 231, sec. 57, p. 644.]

59-1383. TRANSFER OF ASSETS, LIABILITIES, DUTIES, AND RIGHTS TO STATE EMPLOYEE SYSTEM -- GOVERNING BOARD OF CITY SYSTEM ABOLISHED. On its date of establishment all of the funds, assets, liabilities, duties, obligations and rights of the governing board of the city system and of all city members being integrated into the employee system shall be transferred to the employee system. The governing board of such a city system is by this chapter abolished. On and after the date of establishment, benefits payable to annuitants and beneficiaries of such a city system shall become the obligation of the employee system and shall be paid in the same amount as established by such a city system, except that on and after the date of establishment future monthly benefits shall be subject to the provisions of section [59-1356](#) [\[59-1355\]](#), Idaho Code. The funds of such a city system are by this chapter abolished. The custodian of the fund of such a city system shall transfer all cash on hand in such fund to the state treasurer for deposit in the clearing account of the employee system, and all evidence of indebtedness arising from invested money of said fund to the funding agent as designated by the board. The money and property of such funds shall become the money and property of the employee system.

[(59-1383) 1971, ch. 26, sec. 4, p. 68; am. and redesisg. 1990, ch. 231, sec. 58, p. 644.]

59-1384. BENEFITS NOT REDUCED. Benefits paid city members or their beneficiaries shall never be less than the benefits they would have received from the city systems if such systems had not been integrated with the employee system.

[(59-1384) 1971, ch. 26, sec. 5, p. 68; am. and redesisg. 1990, ch. 231, sec. 59; p. 644.]

59-1385. CONTRIBUTIONS BY EMPLOYER -- ADJUSTMENT TO EQUALIZE BENEFITS PAYABLE AND ASSETS TRANSFERRED -- CORPORATE TAX BY CITY TO PAY CONTRIBUTIONS. (a) Each employer shall contribute to the cost of benefits under the system, pursuant to section [59-1322](#), Idaho Code. On the date of establishment and from time to time thereafter, the board shall conduct studies of those benefits payable under section [59-1384](#), Idaho Code, which are in excess of those otherwise earned in accordance with [chapter 13, title 59](#), Idaho Code. If, for any such employer, such study indicates the value of such benefits exceeds the amount of money and property transferred in accordance with section [59-1383](#), Idaho Code, said amount being adjusted for interest and for any previous payments in accordance with this section and section [59-1384](#), Idaho Code, such excess value shall be computed as an additional contribution to be paid by such employer. In the event said amount so adjusted shall exceed said value of such benefits, the excess shall be immediately payable to such employer by the employee system.

(b) Each such employer may levy a special tax on all assessed property within its corporate limits solely for the purpose of paying all or a portion of such contributions.

[(59-1385) 1971, ch. 26, sec. 3, p. 68; am. and redesisg. 1990, ch. 231, sec. 60, p. 644.]

59-1391. DEFINITIONS. As used in sections [59-1391](#) through and including [59-1399](#), Idaho Code, each of the terms defined shall have the meaning given in this section or in section [59-1302](#), Idaho Code, unless a different meaning is clearly required by the context.

(a) "Board" means the retirement board of the employee system.

(b) "Firefighter member" means a person or beneficiary who, prior to October 1, 1980, was receiving benefits or establishing the right to receive benefits from the firefighters' retirement fund.

(c) "Firefighters' retirement fund" means the retirement system created by and existing pursuant to [chapter 14, title 72](#), Idaho Code.

(d) "Employee system" means the retirement system created and existing pursuant to [chapter 13, title 59](#), Idaho Code.

(e) "Employer" means a city or fire district that employs paid firefighters who are participating in the firefighters' retirement fund on October 1, 1980.

(f) "Paid firefighter" means any individual, male or female, excluding office secretaries on the payroll of any city or fire district in the state of Idaho who devotes his or her principal time of employment to the care, operation, maintenance or the requirements of a regularly constituted fire department of such city or fire district in the state of Idaho.

[(59-1391) 59-1351, added 1979, ch. 147, sec. 1, p. 452; am. 1980, ch. 50, sec. 39, p. 102; am. 1984, ch. 132, sec. 8, p. 318; am. and redesign. 1990, ch. 231, sec. 61, p. 645; am. 1990, ch. 249, sec. 9, p. 713.; am. 2013, ch. 187, sec. 15, p. 463.]

59-1392. TRANSFER OF ALL ASSETS, LIABILITIES, DUTIES, OBLIGATIONS AND RIGHTS OF THE FIREFIGHTERS' RETIREMENT FUND TO THE EMPLOYEE SYSTEM. All of the funds, assets, liabilities, duties, obligations and rights provided for by [chapter 14, title 72](#), Idaho Code, shall be transferred to, and integrated with, the employee system on October 1, 1980. Benefits payable to firefighter members shall become the obligation of the employee system on October 1, 1980. Cash on hand in the firefighters' retirement fund shall be deposited to the credit of the public employee retirement fund as provided in section [59-1311](#), Idaho Code.

[(59-1392) 1979, ch. 147, sec. 2, p. 453; am. and redesign. 1990, ch. 231, sec. 62, p. 645.]

59-1393. CONTRIBUTIONS. (1) Employers shall deduct, withhold and remit contributions from the salaries of paid firefighters who were employed as paid firefighters prior to October 1, 1980, as provided by section [72-1431](#), Idaho Code.

(2) Employers shall make payments required by the provisions of section [72-1432](#), Idaho Code, for all paid firefighters employed prior to October 1, 1980.

(3) Employers shall deduct, withhold and remit contributions from the salaries of paid firefighters, whose employment begins on or after October 1, 1980, and make employer contributions for such paid firefighters, as provided in [chapter 13, title 59](#), Idaho Code, on and after October 1, 1980.

[(59-1393) 1979, ch. 147, sec. 3, p. 453; am. 1980, ch. 50, sec. 40, p. 102; am. and redesign. 1990, ch. 231, sec. 63, p. 646.]

59-1394. EXCESS COSTS -- ADDITIONAL CONTRIBUTIONS. (1) In addition to the employee and employer contributions required by [chapter 14, title 72](#), Idaho Code, additional contributions shall be required to fund the provisions of section [59-1397](#), Idaho Code. These costs shall be borne by employers and by the state of Idaho as hereinafter provided.

(a) Fifty percent (50%) of the gross receipts by the state of the tax on fire insurance premiums, as provided by section [41-402](#), Idaho Code, is hereby perpetually appropriated to the public employee retirement account for the purpose of partially funding the benefit payment requirements imposed by the provisions of [chapter 14, title 72](#), Idaho Code.

(b) The board shall conduct studies from time to time of the benefits prescribed by section [59-1397](#), Idaho Code, to determine the additional contributions required to fund the rights conferred by [chapter 14, title 72](#), Idaho Code, above and beyond the initial contribution from the fire insurance premium tax required by subsection (1) (a) of this section. If such studies indicate the value of the benefits exceeds the required contributions otherwise prescribed, the board shall establish an additional contribution rate necessary to bring the amounts into balance. The cost of such additional contribution shall be borne equally by the employers through additional contributions and the state of Idaho through the fire insurance premium tax. In addition to appropriation of the fire insurance premium tax contained in subsection (1) (a) of this section, the amount of the gross receipts by the state of the tax on fire insurance premiums, as provided by section [41-402](#), Idaho Code, necessary to match dollar for dollar the additional contribution required of employers is hereby perpetually appropriated commencing July 1, 1980 to the public employee retirement account for the purpose of subsection (1) (b) of this section. If the matching funds herein provided equal one hundred percent (100%) of the gross receipts from the fire insurance premium tax, the employers shall contribute the balance of the monies required to meet the required contribution rate. The additional contribution rate from the employers commencing October 1, 1980 shall be ten percent (10%) of the pay period salary of each paid firefighter until next determined by the board.

(2) Nothing herein contained shall prevent the board from contracting with employers to provide a schedule of contributions which will retire any excess cost over a given period of time, not to exceed fifty (50) years. In the event that such agreements are reached, the amount of the fire insurance premium tax necessary to match additional employer contributions is continuously appropriated for that purpose.

[(59-1394) 1979, ch. 147, sec. 7, p. 454; am. 1980, ch. 50, sec. 44, p. 103; am. and redesign. 1990, ch. 231, sec. 64, p. 646; am. 1996, ch. 208, sec. 14, p. 672; am. 1996, ch. 322, sec. 57, p. 1086.]

59-1395. MEMBERSHIP RIGHTS AND DUTIES. The rights, benefits, memberships, payments, duties and obligations of paid firefighters whose employment begins on or after October 1, 1980, with respect to membership and participation in the employee system shall be governed by the provisions of [chapter 13, title 59](#), Idaho Code.

[(59-1395) 1979, ch. 147, sec. 4, p. 453; am. 1980, ch. 50, sec. 41, p. 103; am. and redesign. 1990, ch. 231, sec. 65, p. 647.]

59-1396. LIMIT ON SEPARATION BENEFIT. (1) When a firefighter member who was employed prior to October 1, 1980, terminates employment and seeks return of his or her accumulated contributions, such contributions shall be returned as provided under the provisions of section [72-1444](#), Idaho Code.

(2) When a paid firefighter whose employment began on or after October 1, 1980, terminates employment and seeks return of his or her accumulated contributions, such contributions shall be returned as provided by sections [59-1358](#) and [59-1359](#), Idaho Code.

[(59-1396) 1979, ch. 147, sec. 5, p. 454; am. 1980, ch. 50, sec. 42, p. 103; am. and redesign. 1990, ch. 231, sec. 66, p. 647; am. 2001, ch. 138, sec. 4, p. 499.]

59-1397. BENEFITS PAYABLE. The combined rights and benefits of paid firefighters who were employed prior to October 1, 1980, shall not be less than the rights and benefits they would have received from the firefighters' retirement fund, had the fund not been integrated with the employee system.

[(59-1397) 1979, ch. 147, sec. 6, p. 454; am. 1980, ch. 50, sec. 43, p. 103; am. and redesign. 1990, ch. 231, sec. 67, p. 647.]

59-1398. MEMBERSHIP IN SOCIAL SECURITY. The provisions of the federal social security system are hereby made applicable to all paid firefighters hired for the first time on or after October 1, 1980.

[(59-1398) 1979, ch. 147, sec. 8, p. 455; am. 1980, ch. 50, sec. 45, p. 104; am. and redesign. 1990, ch. 231, sec. 68, p. 648.]

59-1399. COOPERATION OF STATE INSURANCE FUND. The director of the state insurance fund is hereby authorized and directed to cooperate with and furnish necessary information to the board to accomplish the purposes of this chapter.

[(59-1399) 1979, ch. 147, sec. 10, p. 456; am. and redesign. 1990, ch. 231, sec. 69, p. 648.]